

1 THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF TEXAS
3 HOUSTON DIVISION

4 THE UNITED STATES OF) No. H-07-CR-362
5 AMERICA)
6 -vs-) HOUSTON, TEXAS
7) JULY 1, 2008
8)
9 KEVIN XU) 8:33 a.m.

10 Volume II

11 TRANSCRIPT OF JURY TRIAL
12 BEFORE THE HONORABLE SIM LAKE AND A JURY

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1 THE COURT: Good morning, ladies and gentlemen.

2 Please be seated. Thank you very much for being here on time.

3 It's 8:30. We will begin.

4 You may continue with your direct examination of

5 Mr. Sherman.

6 MR. LOUIS: Thank you, Your Honor.

7 ROBERT SHERMAN

8 having been previously duly sworn, testified as follows:

9 DIRECT EXAMINATION(con't)

10 BY MR. LOUIS:

11 Q. Before we broke yesterday, we were going over excerpts
12 of Government's Exhibit No. 9-A of the meeting that took place
13 in Bangkok on March 6, 2007; is that correct.

14 A. Yes, sir, that's correct.

15 Q. All right. We were in the midst of it so I'm just going
16 to start from the beginning since we were in the midst of
17 playing it.

18 (Audio and videotape playing.)

19 BY MR. LOUIS:

20 Q. What was Mr. Xu talking about how he got into the
21 European market and paying someone off, what was the nature of
22 that conversation?

23 A. I was a little bit confused specifically about that. I
24 guess he was talking about how he smuggled the pills within
25 the context of the containers. And I believe there was a

1 reference to a payoff in that.

2 Q. When Mr. Xu says, "I don't know. You don't know," what
3 are you talking about?

4 A. Well, within the context of my persona, my undercover
5 persona, I was acting concerned about getting in trouble and
6 bringing it in. And I was asking him more details regarding
7 his suggestion of placing it in these barrels. And he
8 provided a rather detailed scenario for putting it, as you
9 heard on the tape, putting it in these cardboard barrels. I
10 expressed concern, "Well, couldn't they open the barrels?"
11 And he explained it, it was like a fresh protect pack like an
12 aluminum seal that separates the chemicals from the concealed
13 pills and that they usually wouldn't break open that fresh
14 protect sack, they would have to get permission from the
15 shipper and also that it would be mis-declared.

16 In other words, false claim to the United States
17 Customs as chemicals in a powder form, they wouldn't declare
18 that the pills were in there. And also, that in the event
19 that the barrel was opened, that I would just claim I didn't
20 know what was in it, I had no idea, someone must have put it
21 in there. I think he said, "I don't know, I don't know,"
22 like, four or five times. That would be my response that he
23 suggested I would say in the event it was intercepted by
24 Customs.

25 Q. All right.

1 (Audio and videotape playing.)

2 BY MR. LOUIS:

3 Q. When you asked Mr. Xu if he had American customers and if
4 he shipped that way, what was his response?

5 A. Well, I asked him if any of his other American customers
6 had any problems and he said no. But I'd like to go back to
7 one point specifically on that segment of the tape. I think
8 it's very relevant to this whole venture.

9 MR. AMANN: Your Honor, I would object. That's
10 nonresponsive to the question.

11 THE WITNESS: Sorry.

12 THE COURT: Overruled.

13 THE WITNESS: May I answer?

14 THE COURT: Yes.

15 A. Okay. He was talking about what we call transshipping
16 through South Africa and Brazil. That is a common smuggling
17 technique in all kinds of illegal contraband. And the purpose
18 of that is when you tranship, you want to send it to a third
19 country before you send it to the United States so it would
20 arouse less suspicion among U.S. Customs. There are certain
21 countries that, say, Colombia for example, in the cocaine
22 trade, that would arouse suspicion of U.S. Customs Inspectors.
23 As far as counterfeit contraband, pharmaceuticals, luxury
24 goods, products, China is a major producer. So shipments from
25 China are usually subjected to more scrutiny by U.S. Customs

1 than other shipments. So what Mr. Xu is suggesting would be
2 to send the cargo to Brazil and then the United States or
3 South Africa and then the United States. Obviously that would
4 arouse less suspicion because those aren't source nations of
5 counterfeit pharmaceuticals. That's something you absolutely
6 wouldn't do, why would you incur the extra cost of shipping to
7 go through a third party to get to the United States when you
8 can ship direct if it was legitimate.

9 (Audio and videotape playing.)

10 BY MR. LOUIS:

11 Q. All right. At some point in time did you have an
12 occasion to obtain consent to search Mr. Xu's computer? I'm
13 going to fast forward a little bit in the case.

14 A. Yes, I did.

15 Q. And let me show you what's marked as Government's Exhibit
16 Nos. 61 and 62. First, look at Government's Exhibit 61 and
17 tell us what that is.

18 A. This is a form of Homeland Security Consent to Search
19 form signed by -- voluntarily signed by Mr. Xu providing us
20 access to the contents of his laptop computer.

21 Q. All right. Government's Exhibit No. 62?

22 A. This is also a signed Consent to Search form by Mr. Xu
23 providing us access and control of his email accounts.

24 MR. LOUIS: Okay. At this time I move for the
25 admission of Government's Exhibit No. 61 and 62 after I tender

1 it to defense counsel for inspection.

2 MR. AMANN: No objection, Your Honor.

3 THE COURT: They are admitted.

4 MR. LOUIS: If we can have Government's Exhibit

5 No. 61. That's okay. I'll just put it on the Elmo.

6 BY MR. LOUIS:

7 Q. And who filled out the information where it has Kevin Xu
8 and Robert Sherman?

9 A. I did, sir.

10 Q. And then for the purposes of the record, can you just
11 read this information?

12 A. I'm sorry?

13 Q. Can you read this?

14 A. Yes.

15 Q. Okay. Go ahead and read it for us, please.

16 A. From the beginning?

17 Q. Yes.

18 A. "I, Kevin Xu have been informed by US ICE Agent Robert
19 Sherman of my right to refuse to comment on any search of
20 property or premises.

21 "I have also been warned by US ICE agent, Robert
22 Sherman, that if I voluntarily consent to a search of my
23 property or premises, anything discovered during the search
24 may be used against me in court or other Customs or
25 administrative proceeding.

1 "I, Kevin Xu, have decided to allow ICE Agents/or law
2 enforcement officers to conduct a search of laptop computer
3 located at SAC/Houston," which is special agent in charge of
4 Houston, our office, "seized incidental to July 24, 2007.

5 "These officers are authorized to by me to search and
6 examine any letters, papers, materials or other property,
7 including computers, they deem necessary. I hereby
8 voluntarily and intentionally consent to allow Agents to
9 search the above described property or premises. My consent
10 is freely given and is not the result of any promises,
11 threats, coercion or other intimidation. I have read the
12 above statement and understand my rights and waive them."

13 Printed name "Kevin Xu," signature and the date and
14 time.

15 Q. What's the date there?

16 A. Looks like August 10th, 2007. I'm not sure.

17 Q. All right. And without reading the entire contents of
18 Government's Exhibit No. 62, does it have the same exact
19 language that you just read on Government's Exhibit 61?

20 A. The actual printed form itself, yes, it does.

21 Q. This allows you to search for the email accounts?

22 A. Email accounts, and all email accounts controlled by Xu.

23 Q. Now, let me show you what's marked as Government's
24 Exhibit No. 45 and ask you, can you identify Government's
25 Exhibit 45?

1 A. Yes, I can.

2 Q. And how can you identify that exhibit?

3 A. By the evidence bag and the corresponding custody
4 receipt.

5 Q. And the evidence bag is inside the concealed closed
6 envelope that has Government's Exhibit 45?

7 A. Yes.

8 MR. LOUIS: At this time I move for the admission of
9 Government's Exhibit No. 45.

10 MR. AMANN: Judge, with respect to -- may I ask the
11 agent some questions on voir dire?

12 THE COURT: Yes.

13 MR. AMANN: Agent Sherman, did you review everything
14 that was on here, on this computer?

15 THE WITNESS: No, I did not.

16 MR. AMANN: So there may be some material on here
17 that's not relevant to this case at all, so far as you know?

18 THE WITNESS: So far as I know.

19 MR. AMANN: Judge, I would object to it on two
20 grounds.

21 Number one, that the wholesale admission of
22 everything in here without knowing whether it's relevant to
23 this case or not is not proper because they have to prove it's
24 relevant. He doesn't have personal knowledge of everything
25 that's on here.

1 Number two, we may run into some serious hearsay
2 problems with respect to what may be on here that was created
3 by other people other than Mr. Xu. So I have a relevance
4 objection and a potential hearsay objection because there's a
5 lot of stuff on here that we just don't know about.

6 MR. LOUIS: The objection goes to weight and not its
7 admissibility because the information that was obtained as
8 part of this case came from his computer. Mr. Xu agreed to
9 allow the agents to look on it. There may be potentially a
10 whole lot of information on his computer. But with respect to
11 this case, there's pertinent relevant evidence that was
12 obtained from the computer. And we're certainly not --
13 there's no way to access the computer but for sake of
14 inclusiveness, the Government wants to submit this piece of
15 evidence. I think his objection goes to weight not its
16 admissibility.

17 THE COURT: Do you intend to offer separately certain
18 items downloaded from the computer?

19 MR. LOUIS: Yes, Your Honor, that's what we're about
20 to do.

21 THE COURT: Why do you need the entire computer drive
22 if you're offering discrete items from it?

23 MR. LOUIS: We'll withdraw it.

24 THE COURT: Okay. I'm sustaining the objection.

25 MR. AMANN: Thank you, Your Honor.

1 BY MR. LOUIS:

2 Q. The Government would now show you what's marked as
3 Government's Exhibit No. 60 and ask you to look at
4 Government's Exhibit No. 60.

5 Let me ask you, have you had an occasion -- an
6 opportunity to inspect Government's Exhibit No. 60 and its
7 contents prior to coming into the courtroom today?

8 A. Yes, I have.

9 Q. And would you, for the record, tell us what is
10 Government's Exhibit No. 60.

11 A. Government's Exhibit No. 60 are photographic images that
12 were recovered from Mr. Xu's laptop computer.

13 MR. LOUIS: All right. At this time I would move for
14 the admission of Government's Exhibit No. 60.

15 MR. AMANN: May I have just a couple of brief
16 questions, Your Honor?

17 THE COURT: Yes.

18 MR. AMANN: Agent Sherman, with respect to
19 Government's Exhibit 60 --

20 May I approach the witness, Your Honor?

21 THE COURT: Yes.

22 MR. AMANN: These are all pictures; right?

23 THE WITNESS: Yes, sir.

24 MR. AMANN: Do you know whether these pictures
25 accurately depict what they purport to depict?

1 THE WITNESS: I don't understand the question.

2 MR. AMANN: Do you know who took these pictures?

3 THE WITNESS: No, I do not.

4 MR. AMANN: Do you know whether these pictures truly
5 represent what is shown in the picture?

6 THE WITNESS: That's kind of a -- those are pictures
7 of various pharmaceutical products, boxes and manufacturing
8 facilities.

9 MR. AMANN: Right. The question I asked is, maybe,
10 kind of a legal one, do they -- you don't have personal
11 knowledge of what's contained in these pictures, do you?

12 THE WITNESS: All I know is they're pictures that
13 were on Mr. Xu's computer.

14 MR. AMANN: That's all you know, you don't know when
15 these pictures were taken?

16 THE WITNESS: There are dates stamped on some of the
17 pictures.

18 MR. AMANN: Do you know if those date stamps are
19 accurate?

20 THE WITNESS: No, I don't.

21 MR. AMANN: Do you know who took the pictures?

22 THE WITNESS: No, I don't.

23 MR. AMANN: I would object, Your Honor, because they
24 haven't properly been authenticated.

25 THE COURT: What do you perceive to be the relevance

1 of these photographs?

2 MR. LOUIS: These are photographs that were of
3 pharmaceuticals that Mr. Xu sent in emails to the agent and
4 also described in -- the nature of the -- of putting the
5 pharmaceuticals in barrels so it describes the testimony that
6 was just discussed between the undercover agent and Mr. Xu.

7 THE COURT: Well, some of them may. Some of them are
8 just pictures of packaging. I don't know whether the
9 packaging is legitimate or bogus. I don't know when it was
10 taken or by whom. If you want to offer these, you can -- if
11 they're referred to in particular emails that are in evidence
12 or will be in evidence, you can refer to them. Or if there's
13 testimony that is relevant to one or more of these
14 photographs. But you need to establish the relevance of each
15 photograph individually, not just en mass.

16 MR. LOUIS: The relevance is all the drugs that were
17 discussed that he's already testified to, the Plavix, the
18 Casodex, the Zyprexa, the Tamiflu are all depicted on these
19 pictures that are in Mr. Xu's computer. The objection goes to
20 the weight, not the admissibility because it shows exactly
21 what the content and the discussion of the scheme was, that
22 these drugs would be sent to the agent and here are pictures
23 describing exactly what was being discussed.

24 THE COURT: How do I know that?

25 MR. LOUIS: Because there's testimony that these were

1 the drugs that Mr. Xu was sending to -- has already -- has
2 sent to the undercover agent.

3 THE COURT: But there's no evidence that Mr. Xu ever
4 referred to any of these photographs during his meeting with
5 the agent.

6 MR. LOUIS: The fact that there's no discussion of
7 the actual photographs doesn't mean that there wasn't -- it's
8 not relevant to the testimony and the scheme.

9 THE COURT: It may be, but I'm sustaining the
10 objection. If you want to show the relevance of individual
11 photographs through Mr. Sherman's testimony or other evidence,
12 you may attempt to do so.

13 MR. LOUIS: All right.

14 THE COURT: But I'm not admitting them as a group
15 without a better foundation.

16 MR. LOUIS: I understand, Your Honor.

17 BY MR. LOUIS:

18 Q. Within Government's Exhibit No. 60 I'll show you what's
19 marked as Government's Exhibit No. 15 and 16. And what is
20 depicted in Government's Exhibit 16 -- No. 15 and 16?

21 A. Depicted in these pictures are -- looks like a cardboard
22 drum with plastic, black plastic and --

23 MR. AMANN: I object to describing the pictures until
24 it's in evidence.

25 THE COURT: Overruled.

1 A. It depicted a cardboard drum with black plastic and on
2 the side were blister packs labeled Zyprexa.

3 BY MR. LOUIS:

4 Q. All right. Then let me also show you what's marked as
5 No. 14 that's part of Government's Exhibit No. 60. And what
6 is that?

7 A. A bunch of -- looks like cardboard drums stacked up.

8 Q. All right. And the discussion that you were having with
9 Mr. Xu back on March 6, 2004, what was that in nature of
10 putting pills in drums?

11 A. Well, this -- as on tape, we -- Mr. Xu discussed
12 concealing drugs, pharmaceutical products in cardboard drums.
13 And one of the drugs that he specifically -- we specifically
14 discussed concealing in the drums was Zyprexa, which is
15 depicted in this photograph.

16 MR. LOUIS: Okay. Your Honor, at this time I move
17 for the admission of -- within Government's Exhibit No. 60 --
18 numbers -- pictures marked as 14, 15 and 16.

19 MR. AMANN: May I speak with the witness, Your Honor,
20 on voir dire?

21 THE COURT: Yes.

22 MR. AMANN: May I approach?

23 THE COURT: Yes. You don't need to keep asking.

24 MR. AMANN: Thank you, Judge.

25 Again, with respect to Government's 14, 15 and 16, do

1 you know when these pictures were taken?

2 THE WITNESS: No, I do not.

3 MR. AMANN: Do you know who took them?

4 THE WITNESS: No, I do not.

5 MR. AMANN: Do you know whether what we're seeing in
6 these pictures is actually what exists.

7 THE WITNESS: It's kind of an existential question.

8 MR. AMANN: The question legally is: Are they
9 pictures? Do they purport to depict what is real?

10 THE WITNESS: I can tell you what it looks like to
11 me. It looks like a bunch of Zyprexa and then --

12 MR. AMANN: Sure. I don't want you to speculate. Do
13 you have personal knowledge that these pictures are true and
14 accurate pictures of what they purport to depict?

15 THE WITNESS: The only personal knowledge I have is
16 that they were on the computer. That's it.

17 MR. AMANN: That's the only knowledge you have
18 whatsoever, they were just on the computer.

19 Your Honor, I would object to 14, 15 and 16 as not
20 properly authenticated.

21 THE COURT: All right. Government Exhibit 60,
22 Photographs 14, 15 and 16 are admitted.

23 MR. LOUIS: Thank you, Your Honor.

24 At this time could you pull up on the screen part of
25 Government's Exhibit No. 60, No. 14.

1 BY MR. LOUIS:

2 Q. And looking at Government's Exhibit No. 14, is there --
3 what is around the top of the barrel?

4 A. Just some type of top. I don't know what it is.

5 Q. The band around there --

6 A. Looks like a sealing band.

7 Q. Was that what Mr. Xu was talking about with you?

8 A. He talked about a fresh pack seal. I don't know if that
9 would be the actual nomenclature for that.

10 Q. All right. Now let's look at Government's Exhibit
11 No. 14 -- I'm sorry Government's Exhibit No. 60, No. 14 within
12 Government's Exhibit 60. And what is the drug or
13 pharmaceutical drug that's contained within this barrel?

14 A. Those are blister packs of Zyprexa. And if you make note
15 because you can see both sides of the blister packs, there's
16 the back of the blister pack where you can see there's
17 Zyprexa. And if you look -- I don't -- if I can point on it
18 and it will come up -- right there, that's the back of the
19 blister pack or you can see -- or the front of the blister
20 pack where it lists Zyprexa. And there's other packs here,
21 which is the other side, where the pills are pushed to pop out
22 there so you can see both sides of this. They probably
23 contain pills because you're looking at both sides, they're
24 not popped.

25 Q. Okay. Then Government's Exhibit -- now, is that -- are

1 they different counts within Zyprexa that they make the
2 blister strips?

3 A. I'm not certain. I know they make -- I think they make
4 it seven and ten. I'm not sure.

5 Q. Okay. Let's look at Government's Exhibit No. 60 and a
6 picture within there, No. 16. No. 16.

7 Again, is this a picture of the Zyprexa within the
8 barrel?

9 A. Yes, it is, sir.

10 Q. And what drug is this for the record again?

11 A. Zyprexa.

12 Q. Thank you. Now, let's go to the fourth excerpt of
13 Government's Exhibit No. 9-A.

14 (Audio and videotape playing.)

15 BY MR. LOUIS:

16 Q. All right. What is being discussed when he says do they
17 want you to do something, what was the nature of that
18 discussion?

19 A. Well, what I am discussing is whether we can make an
20 arrangement where I could actually have pills delivered
21 independent of me into the United States and I would make the
22 pick up in the United States. And that's what we're
23 discussing with him, he's not providing that.

24 Q. Okay.

25 (Audio and videotape playing.)

1 BY MR. LOUIS:

2 Q. When you are talking about a document called a pedigree,
3 is that a valid document?

4 A. Yes, it is.

5 Q. And just so we can know, what is a pedigree used for?

6 A. Well, a pedigree is used when selling drugs in the United
7 States to different companies or entities to -- basically,
8 it's a certificate of authenticity, I guess, would be a
9 layman's term for it, to certify that it's legitimate product.

10 Q. And if there's a problem with that particular drug, how
11 does the pedigree play into being able to track the drug?

12 A. You can see who bought and sold the product and you can
13 track it back to where it came from, whether it's counterfeit
14 or has some harmful contents, you can find out where it came
15 from and possibly recall it.

16 Q. So if you mix drugs from China with other drugs that have
17 pedigree showing it came from a wholesaler, who do they look
18 to to determine responsibility for these drugs?

19 A. The wholesaler.

20 Q. Now, you mentioned that anybody could sell drugs after
21 they come into the United States. What did you mean by that?

22 A. Well, within the context of this particular discussion,
23 the traffickers in the counterfeit pharmaceuticals, there's a
24 very, very significant number of them do small volumes on the
25 internet. And, of course, that's a concern to us. But the

1 biggest concern to us as agents of the United States
2 Government are to protect the legitimate supply chain, that
3 the consumers in the United States purchase drugs that they
4 know they're buying safe drugs through a drugstore or
5 dispensed through a hospital. That's our number one concern.
6 So I, in the context of this undercover meeting, I represented
7 to myself that I wasn't interested in the internet, I wasn't
8 interested in selling pills over the internet. I had the
9 ability to obtain pedigrees. And I could merge or mix his
10 product, the counterfeit product that he provided me from
11 China, with legitimate product so I could sell it in
12 pharmacies and at hospitals in the United States. It would be
13 mixed so people would think they were getting legitimate
14 product through a legitimate wholesale outlet.

15 Q. Thank you.

16 (Audio and videotape playing.)

17 MR. LOUIS: All right. Now, let's go to Exhibit
18 No. 5.

19 (Audio and videotape playing.)

20 BY MR. LOUIS:

21 Q. What drugs were being discussed during this conversation?

22 A. These are the drugs like Zyprexa and Casodex. He
23 provided a list to me and as -- this is a list that he had
24 printed up and brought with him to meet me. And on this list
25 he wrote out a list and was pointing or checking off items on

1 the list while he was talking to me. And these are the drugs
2 he said that he had available. And that was the list that we
3 were going over in this conversation.

4 Q. All right. Let me show you what's marked as Government's
5 Exhibit No. 10. And what is Government's Exhibit No. 10?

6 A. That is the list that we were going over when we met.

7 MR. LOUIS: All right. At this time I move for the
8 admission of Government's Exhibit No. 10.

9 MR. AMANN: Quick question, Your Honor?

10 THE COURT: Sure.

11 MR. AMANN: With respect to Government's Exhibit
12 No. 10, there are a lot of writings and markings on stuff like
13 that on there, did you make those?

14 THE WITNESS: I know that on the back are the ones I
15 made because that's when I was discussing -- on the back you
16 see little boxes and arrows. That's when I was discussing the
17 pedigree venture and possible dispersion to legitimate supply
18 chain. I think the other writing is his. I'm not sure. I
19 don't recall.

20 MR. AMANN: Okay. So most of this writing on here,
21 other than what's printed, is yours?

22 THE WITNESS: The underlining is what he did,
23 underlining of the individual respective products.

24 MR. AMANN: No one else wrote on this except you or
25 Mr. Xu; is that correct?

1 THE WITNESS: Not that I recall.

2 MR. AMANN: Thank you, Your Honor. I have no
3 objection.

4 THE COURT: Government's Exhibit 10 is admitted.

5 MR. LOUIS: All right. Let's display Government's
6 Exhibit No. 10.

7 BY MR. LOUIS:

8 Q. Can you clear that from your screen?

9 A. Okay.

10 Q. Where it says "Medicine List Updated to February 28,
11 2007," was this the list that he provided you?

12 A. Yes, that's the list he did.

13 Q. And the list of drugs there, can you read those drugs
14 please?

15 A. Aricept, Cialis, Casodex, Cadcuttz, Cytotec, Gliciazide,
16 Levitra, Plavix, Propecia, Tamiflu, Viagra, Zprexa, Glivec,
17 Taxotere, Arimidex, Ezetrol, Singulair, Valium, Cellcept,
18 Sutent, Prozac, Tahor, Aprovel, Co-Diovan, Cozaar, Micardis,
19 Risperdal, Xyzal and Keppra.

20 Q. And out of those, the discussion was of the ones that are
21 underlined specifically trying to do the test?

22 A. Yes. In that segment of the conversation we were
23 discussing doing some small several hundred pill test orders
24 to see if he would be able to provide the products on a timely
25 basis. And we were discussing what the initial shipment would

1 be and those are the ones he underlined.

2 THE COURT: How did you decide on those? Did you
3 suggest those four pharmaceuticals?

4 THE WITNESS: I don't recall specifically who
5 suggested them. I know that throughout the discussions those
6 were the ones that he emphasized availability so --

7 THE COURT: Thank you.

8 THE WITNESS: Okay.

9 MR. LOUIS: Let's go to the next excerpt of
10 Government's Exhibit 9.

11 See if you can tap your screen to clear that.

12 (Audio and videotape playing.)

13 BY MR. LOUIS:

14 Q. At one point in the discussion you were talking about you
15 wanted to make sure that the quality in the packaging was
16 okay.

17 A. That's correct.

18 Q. If these were legitimate product, would you be concerned
19 about the quality?

20 A. No, of course not. In this segment and in the previous
21 segment I discussed the coloring of the pill. You know, one
22 would never go into a pharmacy and say, "Make sure the color
23 on my Lipitor is the right color." You say that to a
24 manufacturer, the clandestine manufacturer, to make sure it
25 looks like the real thing and those are questions I was

1 specifically asking him.

2 MR. LOUIS: Go to the next excerpt.

3 (Audio and videotape playing.)

4 MR. LOUIS: All right. Let's play the next one.

5 (Audio and videotape playing.)

6 BY MR. LOUIS:

7 Q. When you talked about method of payment, what was his
8 response?

9 A. Well, I was trying to establish how we were going to make
10 the payments for the shipments. Sandra, who's the operative,
11 the pharmaceutical company operative, and at this point we
12 were trying to cut her totally out. And I think he was trying
13 to be loyal to her and was wondering if the payment was going
14 to go through her. We were cutting that out. We were trying
15 to establish the direct payment method to provide payment for
16 the drugs.

17 Q. Okay.

18 (Audio and videotape playing.)

19 BY MR. LOUIS:

20 Q. Now, what was he saying at that point?

21 A. He was saying -- we were discussing the terms of payment
22 for the pharmaceutical drugs. And he made the statement that
23 this relationship is very special.

24 Q. What did you take it to mean when he said "very special"?

25 MR. AMANN: Your Honor, I object to speculation.

1 THE COURT: Sustained.

2 BY MR. LOUIS:

3 Q. Did he also say this was not normal?

4 A. Yes, he did.

5 (Audio and videotape playing.)

6 BY MR. LOUIS:

7 Q. What did he say?

8 A. Well, he reiterated the fact that this business was very
9 special and secret and this business has no written contract.

10 Q. Now, if you were doing legitimate business, would you
11 expect there to be some terms in which you would do business?

12 A. Yes. In any kind of business, especially something as
13 regulated as pharmaceutical products, you're going to have
14 invoices, purchase orders, a paper trail of businesses and
15 contracts. Never an oral contract that's specifically
16 stipulated that's it's going to be oral and that's because
17 it's special.

18 (Audio and videotape playing.)

19 BY MR. LOUIS:

20 Q. Did Mr. Xu indicate to you that this was his first time
21 discussing or transacting business concerning these types of
22 pharmaceutical, common pharmaceuticals?

23 A. No, he didn't.

24 Q. Now, let me show you what's marked as Government's
25 Exhibit Nos. 4 and 4-A. I'm handing you a box. And if you

- 1 would, take a look at what's in the box.
- 2 A. Blister packs containing Zyprexa tablets.
- 3 Q. All right.
- 4 A. And also --
- 5 Q. What is it in for -- describe it.
- 6 A. I'm sorry, also boxes and printed insert.
- 7 Q. First, so that the record is clear, we've got one package
- 8 that has Government's Exhibit No. what on it?
- 9 A. Government's Exhibit 4.
- 10 Q. What is contained in this evidence envelope?
- 11 A. The Zyprexa boxes.
- 12 Q. When you received the Zyprexa, was it in the box or
- 13 outside the box?
- 14 A. It was in the box.
- 15 Q. And was it taken outside the box -- I mean, taken out of
- 16 the box?
- 17 A. Yes.
- 18 Q. All right. And then you also have another bag that has
- 19 Government's Exhibit No. 4 on it?
- 20 A. That's correct, No. 4.
- 21 Q. What is this?
- 22 A. It is seven count blister strips of ten milligrams of
- 23 Zyprexa.
- 24 Q. And is that also written on the label there?
- 25 A. Yes, it is.

1 Q. All right. Then there's a third bag that has
2 Government's Exhibit No. what on it?

3 A. No. 4, sir.

4 Q. All right. What's contained in this bag?

5 A. Seven count blister strips of Zyprexa also.

6 Q. Lastly of Government's Exhibit 4-A, what is this?

7 A. These are the inserts for the respect corresponding to
8 the Zyprexa.

9 Q. Now, if you were receiving authentic product, would the
10 packet insert be already in the box?

11 A. Yes, they would.

12 Q. Then, let me show you what's marked as Government's
13 Exhibit No. 5 first and ask you to identify that.

14 A. That is an EMS or China post air way bill, shipping
15 label.

16 Q. And was that on the box that the Zyprexa came in?

17 A. Yes, it was.

18 Q. Let me show you now Government's Exhibit No. 5-A and ask
19 you what is this exhibit.

20 A. It's the evidence custody receipt for all the items we
21 just discussed.

22 Q. And what drug is listed on that inventory log evidence
23 receipt?

24 A. Zyprexa.

25 MR. LOUIS: At this time I move for the admission of

1 Government's Exhibit No. 4, 5 and 5-A.

2 MR. AMANN: Now, Agent Sherman, we've got three bags
3 that all have Exhibit No. 4 on them. Then the 4-A is package
4 inserts; correct?

5 THE WITNESS: Yes.

6 MR. AMANN: No objection, Your Honor.

7 THE COURT: All right. Government's Exhibits 4, 4-A,
8 5 and 5-A are admitted.

9 BY MR. LOUIS:

10 Q. Now, let's look on the screen, if we can, Government's
11 Exhibit No. 5.

12 Now, is this what we've been talking about, you said
13 the EMS way bill?

14 A. Yes, that's correct.

15 Q. Is it also known as shipping label?

16 A. Shipping label, yes, sir.

17 Q. And can you read for the record the number that's on the
18 shipping label?

19 A. Tracking number is EA825919017CN.

20 Q. All right. And who -- to who is this shipment sent to?

21 A. Mr. Edwardo Tanner.

22 Q. And is that you?

23 A. That was my undercover name.

24 Q. And who is it sent from?

25 A. From Wang.

1 Q. Did you receive an invoice from Mr. Xu for this shipment?

2 A. No, I did not.

3 Q. Did you receive any document from Mr. Kevin Xu or Orient
4 Pacific International with respect to this shipment?

5 A. No, I did not.

6 Q. Is there any way to trace this shipment back to Mr. Kevin
7 Xu of Orient Pacific International?

8 A. As far as business transaction documents, no.

9 Q. And let me now show you Government's Exhibit No. 60, a
10 photograph that's numbered 18 and ask you to look at that
11 photograph and also to look at Government's Exhibit No. 4-A
12 and compare the two and see if they depict the same thing.

13 A. Yes, they are Zyprexa boxes.

14 Q. Okay. I want you to look at Government's Exhibit No. 60
15 with photograph of the number 26 on it and compare that with
16 Government's Exhibit 4-A.

17 A. We have to open this bag because there's multiple lot
18 numbers.

19 Q. That's fine. First of all, do they show the same?

20 A. They show the Zyprexa boxes.

21 MR. LOUIS: All right. At this time I move for the
22 admission of Government's Exhibit -- within Government's
23 Exhibit No. 60, what's marked with numbers 26 -- 18 and 26.

24 MR. AMANN: Mr. Sherman, with respect to Government's
25 Exhibit No. 60, Sub-items 18 and 26, do you know when these

1 pictures were taken?

2 THE WITNESS: No, I do not.

3 MR. AMANN: Are they pictures of what has previously
4 been introduced into evidence as Government's Exhibit 4.

5 THE WITNESS: They're both pictures of Zyprexa boxes.

6 MR. AMANN: But are they pictures of those boxes?

7 THE WITNESS: I can't say that.

8 MR. AMANN: So you have no personal knowledge of who
9 took these pictures and when they were taken; correct?

10 THE WITNESS: That's correct.

11 MR. AMANN: I object to Government's Exhibit No. 60,
12 Sub-items 18 and 26.

13 MR. LOUIS: It goes to weight and not admissibility.
14 These compare the boxes. They appear to be the same boxes of
15 the drugs that were sent to the agent.

16 THE COURT: Objection is overruled. I'll admit 18
17 and 26.

18 MR. LOUIS: At this time could we have displayed
19 Government's 60 marked with No. 18, please.

20 BY MR. LOUIS:

21 Q. And what packaging, is this U.S. packaging or is this
22 another market's packaging?

23 A. I believe it's foreign market. I'll have to look at it
24 again.

25 Q. All right.

1 A. My eyes aren't that good. I can't see it from here.

2 Thank you. It's French packaging.

3 Q. If we go to Picture No. 26 within Government's

4 Exhibit 60 -- kind of bright -- is that also French packaging?

5 A. Yes, it is, sir.

6 Q. All right. Now, let me show you what's marked as

7 Government's Exhibit No. 6 and ask you to look at one, two,

8 three packages. Would you describe the first one that you

9 have for us, please?

10 A. Yes. The first package is Plavix and it's 28 count

11 blister pack of Plavix tablets.

12 Q. I forgot to ask you, do you know who the manufacturer is

13 of Zyprexa?

14 A. Zyprexa is Eli Lilly.

15 Q. Then with respect to Government's Exhibit No. 6, who

16 manufactures Plavix?

17 A. Plavix, I believe, is manufactured by Sanofi.

18 Q. Is that Sanofi aventis?

19 A. Sanofi aventis, sorry.

20 Q. And is there a label on the packages that Plavix is in?

21 What's on -- what's written on the label?

22 A. It's the custody receipt.

23 Q. All right. And then look at the next component of

24 Government's Exhibit No. 6, what is that?

25 A. That is boxes -- corresponding boxes for the Plavix.

1 Q. Did the pills come in the boxes?

2 A. I believe they did, yes.

3 Q. And why were they taken out of the boxes?

4 A. To facilitate counting for evidentiary purposes and also
5 for room for storage.

6 Q. All right. Then the third package within Government's
7 Exhibit No. 6, what is that?

8 A. Those are the corresponding inserts for the Plavix.

9 Q. Then let me show you what's marked as Government's
10 Exhibit No. 7, first, and ask you to identify that exhibit.

11 A. That is the corresponding air way bill.

12 Q. And did that -- did this all come in a box?

13 A. Yes, it did.

14 Q. Was that on the box?

15 A. Yes, it was.

16 Q. And then Government's Exhibit No. 7-A, what is that? The
17 other piece of paper in front of you.

18 A. This is the copy of the evidence receipt.

19 Q. All right. And what's the date on that evidence receipt?

20 A. February 20th, 2007.

21 MR. LOUIS: All right. At this time I move for the
22 admission of Government's Exhibit No. 6, which is three parts
23 and then Government Exhibit No. 7 and 7-A.

24 MR. AMANN: May I have just a moment, Your Honor?

25 Your Honor, I have no objection to 7, 7-A or 6, which

1 is composed of three bags.

2 THE COURT: All right. Government's Exhibits 6, 7
3 and 7-A are all admitted.

4 MR. LOUIS: Thank you.

5 BY MR. LOUIS:

6 Q. Let me go back. I forgot to ask you something.

7 Looking at Government's Exhibit No. 5-A, which is the
8 evidence log for the Zyprexa that you received that's marked
9 as Government's Exhibit No. 4, what's the date that's shown in
10 the receipt of those pills.

11 A. December 26, 2006.

12 Q. Thanks. And then looking at Government's Exhibit
13 No. 7-A, what's the date on the inventory log for receipt of
14 the Plavix?

15 A. Is this the one we're talking about right now?

16 Q. Yes.

17 A. February 2, 2007.

18 Q. All right. Now, I'm going to hand you a series of
19 photographs, which are part of Government's Exhibit No. 60,
20 and ask you to compare what's depicted on Government's Exhibit
21 No. 60, which is No. 1, No. 2, and No. 17, compare the
22 packaging.

23 A. There are boxes for the Plavix, the 28 count blister
24 packs for the Plavix and also the boxes of Plavix inside a
25 carton.

1 Q. All right. Government's Exhibit No. 6 that you have
2 there, Plavix, what's the strip count?

3 A. This respective one is 98 blister packs which is 2,744,
4 but --

5 Q. I didn't ask the question appropriately. Is it 28 count
6 blister strips?

7 A. Oh, yes.

8 MR. LOUIS: All right. At this time I move for the
9 admission of, within Government's Exhibit No. 60, pictures
10 with the numbers 1, 2 and 17.

11 MR. AMANN: Mr. Sherman, same questions as before
12 regarding the pictures. Numbers 2 -- or rather 1, 2 and 17,
13 do you know who took them?

14 THE WITNESS: No, I do not, sir.

15 MR. AMANN: Do you know when they were taken.

16 THE WITNESS: No, I don't.

17 MR. AMANN: Do you have personal knowledge about
18 whether these pictures are pictures of what we already have in
19 evidence as Government's Exhibit No. 6?

20 THE WITNESS: I have no knowledge that that is this
21 specific bag of evidence, no.

22 MR. AMANN: So it could be something else?

23 THE WITNESS: Yes, it could be.

24 MR. AMANN: This could be a picture of something
25 else. You don't know where the pictures came from.

1 THE WITNESS: Yes, I do know where they came from.

2 MR. AMANN: Do you know who took them?

3 THE WITNESS: No, I just know where they came from.

4 MR. AMANN: Well, that's what I'm asking, do you know
5 who took them?

6 THE WITNESS: No, I do not.

7 MR. AMANN: Same objection, Your Honor, they're not
8 properly authenticated and, therefore, not relevant.

9 THE COURT: The shipment that you received on
10 February 20th, 2007, of Plavix, did it come in boxes that were
11 marked Plavix on the outside?

12 THE WITNESS: Yes, they were, Your Honor.

13 THE COURT: Okay. Were the boxes similar to those
14 depicted in Item 17 of Government's Exhibit 60?

15 THE WITNESS: In answer to that question, Your Honor,
16 they were both French market packages, both the shipment and
17 the one depicted in the picture found on Mr. Xu's laptop
18 computer.

19 THE COURT: Exhibit 60, Item 17 has some large
20 corrugated cardboard boxes. Do you have the box that your
21 shipment arrived in on or about February 20th, 2007?

22 THE WITNESS: No, we don't, sir.

23 THE COURT: Why not?

24 THE WITNESS: It was just destroyed.

25 THE COURT: All right. I'll sustain the objection as

1 to Item 17 but admit Items 1 and 2.

2 MR. LOUIS: Thank you, Your Honor.

3 BY MR. LOUIS:

4 Q. Just so -- why was the box destroyed?

5 A. Because we don't have room for storage.

6 MR. LOUIS: All right. Let's now show Government's
7 Exhibit No. 60 and -- 60 that has No. 1 on it and 60 that has
8 No. 2 on it.

9 BY MR. LOUIS:

10 Q. And is that the same as the packaging that you have in
11 front of you?

12 A. That is also a French market Plavix box.

13 Q. In opening it, is it in all respects, the front and back,
14 same type, same writing?

15 A. They both -- 75 more grams of Plavix with French writing.

16 Q. If you turn it over on the back, does it have the same
17 information depicted there?

18 A. Absent a bar code reader it appears to. They both say
19 France on the back.

20 Q. All right. I'm not sure you can read that, but does
21 yours say 3479457, if my eyesight is good?

22 A. Yes, it does.

23 Q. What about -- same thing.

24 A. I'm sorry?

25 Q. Read what's on your --

1 A. Numero CIP du medicement 3479457.

2 Q. I didn't want you to tell us what your French was.

3 A. Sir?

4 Q. I didn't want you to tell us what your French was.

5 A. Sorry.

6 THE COURT: We're going to take our morning recess.

7 We'll stand in recess until 10:15, ladies and gentlemen.

8 (There was a recess taken.)

9 THE COURT: Be seated, please.

10 Mr. Louis, you may continue.

11 MR. LOUIS: Thank you, Your Honor.

12 BY MR. LOUIS:

13 Q. Mr. Sherman, before the break I was asking you about some
14 of the Plavix -- the pills that came in. I want to show you
15 now what's already been admitted as Government's Exhibit
16 No. 7. Can you read the date that's on this shipping label?

17 A. They did --

18 Q. The date is at the bottom on the right-hand side.

19 A. Oh, 2-20-07.

20 Q. And what's the date that's reflected that it was to?

21 A. I'm sorry, could you repeat that?

22 Q. Can you see what the date that reflects the time it was
23 sent? Can you make that out for the record?

24 A. Posting date looks like 2 -- they do it backwards over
25 there. So it's February 7th, looks like.

1 Q. What about February 13th, 2007?

2 A. Oh, maybe the 13th, I'm not sure -- oh, yeah, I got it
3 backward. That's correct.

4 Q. All right. Now, again does Mr. Xu's name -- first of
5 all, can you read for the record what the shipping label
6 number is, please?

7 A. Yes. It is EA746968404CN.

8 Q. Now, do you see Mr. Xu's name anywhere on the shipping
9 label?

10 A. No, I do not, sir.

11 Q. Did you receive any invoice from Mr. Xu pertaining to the
12 Plavix that you received on February --

13 A. No, I did not.

14 Q. And at the bottom of this shipping label under the box
15 that says name and description of contents, can you tell us
16 what's reflected there?

17 A. On the bottom it says "gift."

18 Q. What's the declared value?

19 A. \$15.

20 Q. That's for all the contents of Government's Exhibit
21 No. 6, the Plavix that you looked at earlier?

22 A. Yes, sir.

23 Q. Now, I want to also go back to Government's Exhibit

24 No. 5, also a shipping label. And is this the shipping label
25 for the Zyprexa?

1 A. Yes, sir.

2 Q. Would you read what the shipping label number is for us
3 please?

4 A. EA825919017CN.

5 Q. And, again, does Mr. Xu or Orient Pacific International
6 appear anywhere on this shipping label?

7 A. No, it doesn't, sir.

8 Q. And under the box, name and description of contents,
9 what's listed there?

10 A. A gift.

11 Q. What's the declared value?

12 A. \$15.

13 Q. And, again, was this attached to the box that the Zyprexa
14 came in?

15 A. Yes, it was, sir.

16 Q. All right. Now, before you as part of Government's
17 Exhibit No. 60, a photograph marked with No. 27. Would you
18 please compare that with Government's Exhibit -- I think
19 that's Exhibit No. 4 that you have in front of you.

20 A. Sir?

21 Q. The evidence bag, is that marked with Exhibit No. 4?

22 A. Exhibit No. 4, sir, yes, it is.

23 Q. And would you compare it with what's shown in Picture
24 No. 27, part of Government's Exhibit No. 60, and Exhibit
25 No. 4?

1 A. The picture 27 --

2 Q. What is it -- first of all, what is it a picture of?

3 A. It's a picture of a Zyprexa box.

4 Q. All right. And is that the same -- appear to be the same
5 type of Zyprexa box as part of Exhibit No. 4?

6 A. They both have a corresponding lot number.

7 Q. And what is that lot number?

8 A. The lot number is A202503 with expiration of 03-2009.

9 Q. All right.

10 A. And the -- of course Picture 27 came from the laptop.

11 Q. All right. Thank you.

12 MR. LOUIS: At this time I move for the admission of
13 photograph with the No. 27 as part of Government's Exhibit 16.

14 MR. AMANN: Mr. Sherman, you don't know when this
15 picture was taken or who it was taken by?

16 THE WITNESS: That's correct, sir.

17 MR. AMANN: And you don't know if it's a picture of
18 what is contained in -- actually it doesn't appear at all to
19 be a picture of what is contained in Government's Exhibit 4,
20 does it? There are differences between the picture, which is
21 Government's No. 27, subpart of 60 and what you received,
22 isn't it?

23 THE WITNESS: Yes, but it has a corresponding lot
24 number.

25 MR. AMANN: But there's differences between the two,

1 aren't there?

2 THE WITNESS: The bordering is a different color.

3 MR. AMANN: Okay. I object to 27, Your Honor. Not
4 properly authenticated, therefore, not relevant.

5 THE COURT: Objection sustained.

6 BY MR. LOUIS:

7 Q. After receiving Government's Exhibit No. 4, 6 and 2 --
8 those were all before you had the meeting with Mr. Xu; is that
9 correct?

10 A. That's correct.

11 Q. After you concluded your meeting with Mr. Xu, what was
12 the plan, what was going to happen?

13 A. The plan after having the meeting with Mr. Xu is that we
14 were going to commence, meaning me, in an undercover capacity,
15 was going to commence direct contact with Mr. Xu in order to
16 purchase pharmaceutical drugs from him for the United States
17 market.

18 Q. Did you do that?

19 A. Yes, I did.

20 Q. I'm going to hand you Government's Exhibit No. 12, 13, 14
21 and 15. Would you take a look at these exhibits and tell us
22 if you're familiar with these exhibits.

23 First, Government's Exhibit No. 12, would you
24 describe what it is for the record?

25 A. That is an email I sent to Mr. Xu on Friday, March 16th,

1 2007, discussing the Bangkok meeting and requesting
2 confirmation for prices for Plavix, Tamiflu and Zyprexa.

3 MR. LOUIS: At this time I'll move for admission of
4 Government's Exhibit No. 12.

5 MR. AMANN: No objection, Your Honor.

6 THE COURT: It's admitted.

7 MR. LOUIS: Can we have that displayed?

8 BY MR. LOUIS:

9 Q. And the email that's reflected from Mr. Xu, can you read
10 that for us, please?

11 A. Yes, sir. "Hello Kevin."

12 Q. The email address.

13 A. Oh, the address is Kevinxl@opiglobe.com.

14 Q. And for the record, what's the subject of this email?

15 A. Subject is Bangkok meeting.

16 Q. And the date for the record, please?

17 A. March 16th, 2007.

18 Q. All right. Could you read what you wrote in your email
19 to Mr. Kevin Xu?

20 A. "Hello Kevin:

21 "Thank you for taking the time to meet me in Bangkok.
22 It was a very productive meeting and has reassured me you are
23 serious about doing business. Sandra recommends you very
24 highly. I have spoken to my customers and they are certain
25 they can move large volume if the orders can be filled in a

1 reliable, timely manner. I think we should do a couple of
2 test orders to assuage their concerns.

3 "Please reconfirm prices Plavix, Tamiflu and Zyprexa
4 and payment wiring instructions. We will use the same address
5 in Texas that you shipped the previous orders.

6 "Thank you:

7 "Edwardo."

8 Q. Previous orders that you're referring to is that what we
9 looked at the Tamiflu, the Zyprexa, did Plavix?

10 A. Yes.

11 Q. Now, can you now look at Government's Exhibit No. 13 and
12 tell us if you can identify that and what it is.

13 A. Yes, that's an email from Kevin Xu to me.

14 Q. All right. What's the date of that email?

15 A. That email is March 18th, 2007.

16 Q. All right. This is an email that you extracted from your
17 computer?

18 A. I beg your pardon?

19 Q. This is email that you provided after you received the
20 email from Mr. Xu?

21 A. Presumably.

22 Q. I mean, this email is what you provided the Government
23 that you got during your discussions with Mr. Xu?

24 A. In the course of our email communications, this was an
25 email I received from Kevin Xu.

1 MR. LOUIS: At this time I move for the admission of
2 Government's Exhibit 13.

3 MR. AMANN: One question, Your Honor.

4 That email, Government's Exhibit 13, that came off of
5 your computer; right?

6 THE WITNESS: Yes.

7 MR. AMANN: I have no objection.

8 MR. LOUIS: You pronounced it better than I did.

9 THE WITNESS: What?

10 MR. LOUIS: I said he asked the question better than
11 I did to get the response.

12 THE COURT: Okay. Government's Exhibit 13 is
13 admitted.

14 MR. LOUIS: At this time if we can have Government's
15 Exhibit 13.

16 BY MR. LOUIS:

17 Q. This is a printout of a Yahoo email; is that correct?

18 A. Yes, that's right, Yahoo account.

19 Q. And read the date for us, please.

20 A. 18 March 2007.

21 Q. And from whom?

22 A. Kevin Xu.

23 Q. And is this the same email account that you referenced a
24 moment ago?

25 A. No, that's another email.

1 Q. And how did you know to send -- is this the first time

2 Mr. Xu used this email account that you're aware of?

3 A. I don't recall. I do remember in the course of one
4 telephone conversation he provided this particular address.

5 Q. All right. And to Tri state Distributors is that your
6 undercover company name?

7 A. Yes, it was.

8 Q. Can you please read the -- and the subject is what?

9 A. Subject was "offer."

10 Q. Please read the email for the record, please.

11 A. "Dear Ed,

12 "Glad to receive your following email.

13 "For three products, now we can offer you again for
14 price as follows: Tami US\$22/strip, Plx US\$38/box, Zy
15 US\$42/box. Now we have fresh cargos in warehouse, we can
16 deliver immediately.

17 "Payment should be sent to our account in HSBC bank
18 when you confirm the concrete order quantity, then we will
19 delivery immediately to your nominated mailing address.

20 "Also, this month, we have fresh cargos of Casodex,
21 if you need some? Please check and let us know.

22 "Waiting for your soonest reply and hope a fruitful
23 cooperation with you in the future.

24 "b.rgs."

25 Q. Now, had you previously discussed with him that you

1 wanted any Casodex?

2 A. I don't recall if I did or not.

3 Q. Who is the manufacturer of Casodex?

4 A. Casodex is AstraZeneca.

5 Q. Do you know what Casodex is for?

6 A. Treatment of cancer.

7 Q. Okay. And now looking at Government's Exhibit No. 14,
8 what is that exhibit?

9 A. That is an email from Kevin Xu to our undercover
10 account -- email account.

11 Q. Again, this is email taken from your computer?

12 A. That is correct.

13 MR. LOUIS: At this time I move for the admission of
14 Government's Exhibit No. 14.

15 MR. AMANN: No objection, Your Honor.

16 THE COURT: It's admitted.

17 MR. LOUIS: Can we have that displayed?

18 BY MR. LOUIS:

19 Q. What's the date of this email?

20 A. 22 March 2007.

21 Q. From Mr. Kevin Xu?

22 A. That's correct.

23 Q. Same email address as the previous email?

24 A. That is correct.

25 Q. Also to your same company Tri State Distributors?

1 A. Yes, sir.

2 Q. And what's the banking information that's provided there?

3 A. That's the wiring instructions for the payment for the
4 drugs.

5 Q. And who is it to be sent to, what's the name of the
6 company?

7 A. Orient Pacific International, Limited.

8 Q. What reference does that have to Mr. Xu?

9 A. That is a corporate entity he was representing himself
10 as.

11 Q. Then the name of the bank?

12 A. HSBC, Beijing branch.

13 Q. All right. Then the account number, please.

14 A. The account number is 006-087167-055 and then it's U.S.
15 dollar denominated account.

16 Q. Lastly, what's written there?

17 A. "Best regards. Kevin."

18 If I might expand on this for a moment. If you
19 recall in the undercover meeting on March 6th, 2007 at the
20 airport in Bangkok, Mr. Xu told me that he would provide me
21 via email payment instructions. When I asked him if it was a
22 Chinese bank he said, no, it was HSBC as detailed in this
23 email.

24 Q. All right. Now, let's look at Government's Exhibit

25 No. 15 that you have in front of you. Can you look at that

1 and tell us what that is?

2 A. That is an email to the undercover account from Kevin Xu.

3 Q. All right. Is that taken from your computer?

4 A. Yes, that's correct.

5 MR. LOUIS: I move for the admission of Government's
6 Exhibit No. 15.

7 MR. AMANN: May I have a moment, Your Honor?

8 Government's Exhibit No. 15, there is a picture
9 contained at the bottom of that. Do you know who took that
10 picture and when that picture was taken?

11 THE WITNESS: All I can tell you is who sent me the
12 picture.

13 MR. AMANN: So that just came with this email?

14 THE WITNESS: That's correct.

15 MR. AMANN: But you don't have any personal knowledge
16 where this picture came from?

17 THE WITNESS: It came from Kevin Xu.

18 MR. AMANN: I mean, you don't know who took the
19 picture?

20 THE WITNESS: That, I don't know.

21 MR. AMANN: Your Honor, with respect partly to
22 Government's Exhibit No. 15, I would object to the inclusion
23 of the picture. It's not authenticated.

24 THE COURT: Objection is overruled. Government's
25 Exhibit 15 is admitted.

1 MR. LOUIS: Can you display it for us, please?

2 BY MR. LOUIS:

3 Q. Again, could you read the date of the email?

4 A. 29 March 2007.

5 Q. Then the -- who is it from?

6 A. Kevin Xu.

7 Q. Who is it to?

8 A. I'm sorry, can you repeat that?

9 Q. Who is it to?

10 A. It is to our undercover email account.

11 Q. And for the record is tri_statedistributors@yahoo.com?

12 A. That is correct, sir.

13 Q. And then the subject is Casodex?

14 A. Misspelled, yes, "Casdex."

15 Q. And Mr. Ed, who is, "Mr. Ed"?

16 A. That's my undercover persona.

17 Q. And would you please read into the record the email for
18 us?

19 A. "Dear Mr. Ed,

20 "Thanks for your email yesterday.

21 "For Casdex, the packing is French for EURO market, I
22 think it is ok for sale in U.S. market. Also, I want to
23 remind you please don't sell our products to EURO market,
24 because we already have our sole sales agent in EURO market,
25 we don't want to meet problems, thanks for your high

1 attention.

2 "For Casdex, our price is USD" -- which is US
3 dollar -- "52/box, attached please find photo for your
4 reference.

5 "Waiting for your further news, and glad to cooperate
6 with you in the future.

7 "b.rgs.

8 "Kevin."

9 MR. LOUIS: All right. Can you scroll up a little
10 bit. All right. We may have to put that on the Elmo.

11 BY MR. LOUIS:

12 Q. When Mr. Xu is talking about not sending this to the
13 French market, what was he referring to?

14 MR. AMANN: Your Honor, I object to speculation.

15 THE COURT: Sustained.

16 BY MR. LOUIS:

17 Q. Did you have discussions with Mr. Xu about sending
18 products to French -- the Europe market?

19 A. Specifically Europe. He's saying he had a distributor in
20 Europe.

21 Q. And when did Mr. Xu indicate that to you?

22 A. In the Bangkok meeting and I believe he may have in the
23 June 24th meeting here in Houston.

24 Q. If Mr. Xu's interested in doing business and making
25 money, why is he telling you not to send what he's sending you

1 to the Europe market?

2 MR. AMANN: I object to speculation.

3 THE COURT: Sustained.

4 BY MR. LOUIS:

5 Q. Did Mr. Xu indicate to you why it was that he did not
6 want you to send this shipment to the Europe market?

7 A. If you could scroll down, it says right there "because we
8 already have sole sales agent in EURO market, we don't want to
9 meet problems, thanks for your high attention," which is a
10 rather peculiar statement.

11 MR. AMANN: Your Honor, I object to speculation.
12 It's an argumentative answer. It's nonresponsive.

13 THE COURT: Overruled.

14 BY MR. LOUIS:

15 Q. When you met with Mr. Xu, either on March 6, 2008, in
16 Bangkok or a subsequent meeting, did Mr. Xu indicate that he
17 didn't want you to send what he's selling you to the Europe
18 market?

19 A. That's correct.

20 Q. And if an individual is selling you product, does he need
21 to concern himself as to what you do with it after you receive
22 it?

23 MR. AMANN: Your Honor, that's speculation. I
24 object.

25 THE COURT: Sustained.

1 BY MR. LOUIS:

2 Q. In your dealings with legitimate -- in a legitimate
3 transaction, would the person who's selling you a product be
4 concerned with what you do with it afterwards?

5 MR. AMANN: Your Honor, I object to that as
6 speculative and it's not relevant.

7 THE COURT: Well, there's no foundation laid that he
8 would know how legitimate transaction was structured. I'll
9 sustain the objection.

10 BY MR. LOUIS:

11 Q. You had occasion to work other cases before this case
12 concerning the trafficking of counterfeit pharmaceuticals; is
13 that right?

14 A. Yes, sir, I have.

15 Q. And you received training on how legitimate markets do a
16 transaction between either a wholesaler and a retailer or the
17 manufacturer and its authorized distributors, what the
18 relationship of those business transactions are?

19 A. Yes.

20 Q. In your training and experience in other cases that you
21 worked, if an individual such as a seller of pharmaceutical
22 products, would they be concerned about what happens with the
23 product after you receive it?

24 MR. AMANN: Your Honor, again, I object. It's not
25 relevant to this case here.

1 THE COURT: I'll sustain the objection. It's -- any
2 potential relevance is outweighed by the specter of confusion
3 and prejudice under Rule 403.

4 MR. LOUIS: All right. Now, let me see the email.

5 BY MR. LOUIS:

6 Q. Is the email clear?

7 A. Yes, it is, sir.

8 MR. LOUIS: Your Honor, if we can switch to the Elmo.

9 BY MR. LOUIS:

10 Q. Now, did you -- I want to now show you what's marked as
11 Government's Exhibit No. 4 out of Government's Exhibit No. 60.
12 Please describe what that is.

13 A. This is a Casodex box, a folded Casodex insert and a
14 blister -- a 30 count blister pack of Casodex tablets.

15 Q. All right. And when did you obtain what's part of
16 Government's Exhibit No. 60? Where did you get that from?

17 A. This particular image came from Mr. Xu's laptop computer.

18 Q. And comparing the image that's on the screen, is it the
19 same image?

20 A. The image from Mr. Xu's laptop computer appears identical
21 to the image that Mr. Xu sent me in the respective email.

22 Q. And I know it's grainy, but I'm going to give it to you
23 again so you can blowup those comparisons.

24 A. Yes, it does, sir.

25 MR. LOUIS: All right. At this time I move for the

1 admission of Government's Exhibit 60, which is No. 4.

2 MR. AMANN: Mr. Sherman, Government's Exhibit No. 4,
3 which is a subpart of 60, you don't know who took that
4 picture?

5 THE WITNESS: No, I don't, sir.

6 MR. AMANN: You have no personal knowledge of whether
7 that is the picture of the same item that is contained in
8 Government's Exhibit No. 15.

9 THE WITNESS: It appears to be the same picture.

10 MR. AMANN: Is it the same?

11 THE WITNESS: I cannot equivocally say it is, but it
12 appears to be the same.

13 MR. AMANN: And you don't know who took it or when it
14 was taken?

15 THE WITNESS: No, I don't, sir.

16 MR. AMANN: I would object to Government's
17 Exhibit 60, Subpart 4, Your Honor, it's not been properly
18 authenticated, therefore, it's not relevant.

19 THE COURT: Objection is overruled. It is admitted.

20 BY MR. LOUIS:

21 Q. All right. That's a picture with No. 4 from Government's
22 Exhibit 60 that you just looked at; is that right?

23 A. I'm sorry, could you repeat that?

24 Q. This is a picture that has a No. 4 on it from
25 Government's Exhibit 60?

1 A. Yes, that's correct.

2 Q. And then this is the email with the -- appears to be the
3 same photo; is that right?

4 A. Yes, sir, it is.

5 Q. Now, I'm going to hand you Government's Exhibit No. 16,
6 17, and ask you to look at these emails.

7 A. Yes, sir.

8 Q. And looking at Government's Exhibit 16, what is that?

9 A. That's an email that I sent from my undercover email
10 account to Kevin Xu's account.

11 Q. And then Government's Exhibit No. 17, what is that?

12 A. That is a copy of a wire transfer for payment.

13 Q. Sent by whom?

14 A. Sent by myself through the undercover account, bank
15 account.

16 MR. LOUIS: At this time I move for the admission of
17 Government's Exhibit Nos. 16 and 17.

18 MR. AMANN: I have no objection, Your Honor.

19 THE COURT: They're admitted.

20 BY MR. LOUIS:

21 Q. Let's look at Government's Exhibit No. 16.

22 MR. LOUIS: We're going to have to switch to the
23 computer, Your Honor.

24 Thank you.

25

1 BY MR. LOUIS:

2 Q. What is the date of this email?

3 A. April 2nd, 2007.

4 Q. And who is it sent from?

5 A. It's from Tri State Distributors, which is our undercover
6 entity.

7 Q. And did you send this email?

8 A. Yes, I did, sir.

9 Q. And what's the subject?

10 A. Subject is purchase order.

11 Q. Sent to whom?

12 A. Kevin Xu.

13 Q. What's the email address listed there?

14 A. I'm sorry?

15 Q. What's the email address that's shown there?

16 A. Kevinxl@opiglobe.com.

17 Q. All right. Slow down just a little.

18 A. Oh, I'm sorry.

19 Q. Can you read the content of the email for me, please?

20 A. "Hello Kevin:

21 "How are you and your wife? We are very busy with
22 the clothing business for our spring/summer line. I have met
23 with the customers and am ready to make a sample purchase for
24 them. The order is as follows:

25 "1) 100 strips Tamiflu = \$2200 USD," which is US

1 dollars, of course.

2 "2) 50 boxes Zyprexa = \$2100 USD.

3 "3) 10 boxes Plavix = \$380 USD.

4 "4) 10 boxes of Casodex = \$1040 USD.

5 "Total: \$5720 USD.

6 "Funds will be wired today to your HSBC account from
7 our TRI STATE account. Please advise us acknowledgement of
8 email and receipt of funds. Ship to:

9 "TRI STATE DISTRIBUTORS ATTN: Ed.

10 "1806 FM 1960 West #630.

11 "Houston, Texas USA 77090.

12 "It is important you email the tracking number as
13 soon as you ship.

14 "Thank you.

15 "ED."

16 Q. Then looking at Government's Exhibit No. 17, and for the
17 record is this the wire transfer request?

18 A. Yes, it is.

19 Q. From your company?

20 A. Yes, it is.

21 Q. To -- Item No. 2, beneficiary --

22 MR. LOUIS: If you can highlight that under No. 2.

23 A. Orient Pacific International, Limited.

24 BY MR. LOUIS:

25 Q. Then what's the amount you are sending to Mr. Xu?

1 A. The amount listed is \$5,720.

2 Q. All right. And subsequent to that, did you have an
3 occasion to also call Mr. Xu?

4 A. Yes, I did.

5 Q. And I want to hand you what's marked as Government's
6 Exhibit No. 18. Prior to coming into court today, have you
7 had an opportunity to listen to Government's Exhibit No. 18?

8 A. Yes, I have.

9 Q. Is it a true and accurate reflection of the call that you
10 placed to Mr. Xu?

11 A. Yes, it is.

12 Q. And was that call placed to Mr. Xu on April 2nd, 2007?

13 A. Yes it was, sir.

14 MR. LOUIS: At this time I move for admission of
15 Government's Exhibit No. 18.

16 MR. AMANN: May I have a few questions, Your Honor?

17 THE COURT: Yes.

18 MR. AMANN: On Government's Exhibit No. 18, when you
19 placed the call, did you receive on the other end of the call
20 Kevin Xu?

21 THE WITNESS: No, I didn't.

22 MR. AMANN: So you don't know who was on the other
23 end of the phone call; is that -- it was not Kevin Xu?

24 THE WITNESS: I believe it was a woman.

25 MR. AMANN: You believe it was a woman, but you

1 cannot identify from your own personal knowledge the voice of
2 the other person on this call, can you?

3 THE WITNESS: That's correct.

4 MR. AMANN: I would object to Government's Exhibit
5 No. 18.

6 MR. LOUIS: Let me ask a further question, Your
7 Honor.

8 MR. AMANN: I'm sorry?

9 MR. LOUIS: A further question.

10 MR. AMANN: Okay.

11 BY MR. LOUIS:

12 Q. When you placed the call to Mr. Xu, you didn't talk to
13 Mr. Xu?

14 A. No, a woman answered the phone.

15 Q. Did you at any time talk to Mr. Xu about the order prior
16 to it being placed?

17 A. Prior to it being placed, the specific order?

18 Q. Yes. Did you have a phone conversation with Mr. Xu?

19 A. Yes. What happened is when I called the number that was
20 provided to me by Mr. Xu, a woman referred me to another phone
21 number, which I immediately dialed and I was able to talk to
22 Mr. Xu and that is reflected on this tape.

23 Q. I want to make sure. On this tape is reflected the
24 conversation that you had with Mr. Xu?

25 A. Yes, sir.

1 Q. All right. So -- any question about that? Any
2 confusion --

3 A. No, sir.

4 Q. -- with respect to Government's Exhibit No. 18 that you
5 talked with Mr. Xu?

6 A. Yes, sir, that's correct.

7 Q. And that conversation took place on April 2nd of 2007?

8 A. Yes, sir, that is correct.

9 MR. LOUIS: All right. I then, again, move for the
10 admission of Government's Exhibit No. 18.

11 THE COURT: It's admitted.

12 MR. AMANN: Thank you, Judge.

13 MR. LOUIS: Can we play Government's Exhibit No. 18
14 please?

15 (Audio playing.)

16 BY MR. LOUIS:

17 Q. All right. And then did you, in fact, send that email --
18 the email we just talked about earlier?

19 A. Yes, I did.

20 Q. All right. Let me show you what's marked as Government's
21 Exhibits Nos. 19 and 20. And what is Government's
22 Exhibit No. 19?

23 A. It's an email from Kevin Xu to the Tri State undercover
24 account.

25 Q. And what's the date of the email?

1 A. April 3rd, 2007.

2 Q. And your call was the previous day, April 2nd?

3 A. That's correct, yes, sir.

4 MR. LOUIS: At this time I move for the admission of
5 Government's Exhibit No. 19.

6 MR. AMANN: No objection, Your Honor.

7 THE COURT: It's admitted.

8 BY MR. LOUIS:

9 Q. And for the record can you read the date on this email?

10 A. Yes, the date is April 3rd, 2007.

11 Q. Who is the email from?

12 A. It's from Tri State -- I'm sorry from Kevin Xu.

13 Q. To whom?

14 A. Tri State Distributors, which is my undercover account.

15 Q. And what was the subject of the email?

16 A. New sample order and payment.

17 Q. Could you read the contents of this email, please.

18 A. "Dear Ed:

19 "Thanks for your call today and email.

20 "We will check with bank and tell you if we have
21 received your remittance, for your cargoes, we will ship
22 immediately when our bank get your payment, we will inform you
23 relative express mail no. according.

24 "Also, if you import garments from China, one
25 subsidiary of our group has done some garments/clothings

1 business mainly for export, if you like, we can let other
2 people to contact you for clothing business.

3 "Also, if you do handbags business last time we talk
4 about in Bangkok?

5 "b.rgs.

6 "Kevin."

7 Q. And had you, in fact, talked about handbags when you were
8 in Bangkok, Thailand?

9 A. Yes. Mr. Xu and his wife, who was at the Bangkok
10 meeting, offered luxury goods such as Louis Vuitton and that
11 type of stuff.

12 Q. Now, look at Government's Exhibit No. 20, the next
13 exhibit I've handed you.

14 A. Okay. May I make one note about this that was just on
15 there?

16 Q. Well, let me ask a question.

17 A. Okay.

18 Q. Is there something else of interest with respect to this
19 Government's Exhibit No. 19 email?

20 A. Yes, there is.

21 Q. What is that?

22 A. If you look at the bottom half of the thread you can see
23 that the email that bounced back from the other account did,
24 in, fact make it to Mr. Xu. It was attached to his response,
25 my email with the order.

1 Q. Okay. That's the order that you mentioned in the
2 telephone call?

3 A. On the 2nd of April.

4 Q. All right. Now, let's look at Government's Exhibit
5 No. 19. And what is Government's Exhibit No. 19 -- I'm sorry,
6 Government's Exhibit No. 20?

7 A. That's an email from Kevin Xu to the Tri State
8 Distributors undercover account.

9 Q. All right. And was that taken from your computer?

10 A. Yes, it was, sir.

11 MR. LOUIS: At this time I move for the admission of
12 Government's Exhibit No. 20.

13 THE COURT: It's admitted.

14 MR. AMANN: No objection, Your Honor. Sorry.

15 THE COURT: It's admitted.

16 BY MR. LOUIS:

17 Q. What's the date of this email?

18 A. It's the 9th of April 2007.

19 Q. And who is it from?

20 A. That is from Kevin Xu.

21 Q. Who is it to?

22 A. Tri State Distributors.

23 Q. In regard to what?

24 A. Missing funds.

25 Q. And can you read the email for us, please?

1 A. "Dear Ed,

2 "Morning.

3 "Funds has received by us, and samples has been sent
4 today through two small parcels, here is mail no. pls pay
5 attention:

6 "EA849177521CN,

7 "EA849177549CN."

8 Q. Read the rest of it, please.

9 A. Oh, I'm sorry.

10 "Also, Sandra asked us to send one his parcel to your
11 address also, please pay attention on it, the Sandra's mail
12 no. is EA849177518CN.

13 "Waiting for your further news.

14 "b.rgs.

15 "Kevin.

16 "P.S. if possible, please tell me your mobile no.
17 for my urgent use, thanks."

18 Q. And did you provide him with your mobile number?

19 A. Yes, I did.

20 MR. LOUIS: If we can scroll down a little bit.

21 BY MR. LOUIS:

22 Q. And what is part of the email that's dated April the 9th,
23 2007, what is that?

24 A. Oh, that was when he initially hadn't received the funds
25 right away. I just told him -- I was writing to him that I

1 was distressed he hadn't received it, but then he subsequently
2 did.

3 Q. Could you read that for the record?

4 A. Sure.

5 "Hello Kevin.

6 "I am distressed to discover you have not received
7 the funds. Please check your account first thing Monday and
8 kindly fill the order as soon as possible. I am scheduled to
9 meet one of my bigger potential clients on Thursday and hoped
10 to have the samples for him. Cancelling the meeting because I
11 do not have samples will be embarrassing for me and may result
12 in my client's loss of confidence in my ability to deliver.

13 The funds were wired to below:

14 "Thank you:

15 "Ed."

16 Q. All right. Did you subsequently receive the
17 pharmaceuticals that you requested from Mr. Xu?

18 A. Yes, I did, sir.

19 Q. I'm going to hand you what's marked as Government's
20 Exhibit No. 21 and 22 -- let me take some of these exhibits --
21 looking at Government's Exhibit No. 21, what is that?

22 A. Ten count of blister strips of Tamiflu absent the boxes
23 and the corresponding inserts.

24 Q. So was there any packaging that accompanied this
25 shipment?

1 A. As far as boxes?

2 Q. Yes.

3 A. No, there were not.

4 Q. You said you had package inserts?

5 A. The inserts, yes, corresponding inserts.

6 Q. All right. And then did you also -- look at Government's

7 Exhibit No. 22. What is Government's Exhibit No. 22?

8 A. It's the corresponding air way bill, shipping label.

9 Q. Then Government's Exhibit No. 22-A what is that?

10 A. The custody receipt.

11 MR. LOUIS: All right. At this time I move for the
12 admission of Government's Exhibit 21, 22 and 22-A.

13 MR. AMANN: May I have just a moment, Your Honor?

14 THE COURT: Yes.

15 MR. AMANN: Mr. Sherman, how is it that you track,
16 for lack of a better word, Government's 20 and 21 with, was
17 it, 21-A?

18 THE WITNESS: Oh, the shipping label?

19 MR. AMANN: Yes.

20 THE WITNESS: The shipping label, if you look at the
21 packing label, this was part of the evidence package. That's
22 reflected on the evidence receipt.

23 MR. AMANN: Okay. Your Honor, I have no objection to
24 Government's 22, 22-A, 21 -- two packages of 21.

25 THE COURT: All right. Government's Exhibit 21, 22

1 and 22-A are admitted.

2 BY MR. LOUIS:

3 Q. In looking at Government's Exhibit 22-A, did you record
4 the shipping label number that's on Government's Exhibit
5 No. 22?

6 A. Yes, it's identical.

7 Q. And could you read the number for us, please?

8 A. Yes, sir, it is EA849177518CN.

9 Q. And if you would look at Government's Exhibit No. 20, do
10 you find that same number in the email Mr. Xu sent to you that
11 had the shipping label?

12 A. Yes, I do.

13 Q. All right. Thank you.

14 Now, look at Government's Exhibit No. 21. This is,
15 again, Tamiflu.

16 A. Yes, sir, it is.

17 Q. And after you received this, did you send a sample of
18 this Tamiflu for analysis?

19 A. Yes, sir, I did.

20 Q. Who did you send it off to?

21 A. To the FDA forensic chemistry.

22 Q. All right. Now, let's look at Government's Exhibit
23 No. 22. I'm going to give you the original. Looking at that,
24 who is this -- who is the sender of this package?

25 A. Looks like just Li, L-i.

- 1 Q. It's in either Mandarin or Cantonese?
- 2 A. I can't tell if that's Li in English letters or Chinese
- 3 character. It looks like Li to me.
- 4 Q. All right. What's the date at the top there?
- 5 A. April -- wait a minute. 4-7-20.
- 6 Q. Well, look at what's highlighted on the screen.
- 7 A. I'm having a hard time making it out.
- 8 Q. Is that 4-7 and then --
- 9 A. 4-7 and then looks like 20, can't tell.
- 10 Q. Well, the last number -- let's discard that to the right.
- 11 Three numbers there is that --
- 12 A. 4-7-4-7.
- 13 Q. Okay. And do you see Mr. Xu's name anywhere on this
- 14 shipping label?
- 15 A. No, I don't, sir.
- 16 Q. Do you see the name Orient Pacific International anywhere
- 17 on the shipping label?
- 18 A. No, I don't, sir.
- 19 Q. And if you go down to the description or in the
- 20 address -- go down to the description part, we have the
- 21 sticker there. Was there anything written there?
- 22 A. I can't recall.
- 23 Q. Okay. Now, as to when it was received, what's the date
- 24 there on the right-hand side?
- 25 A. 4-10-07.

1 Q. And whose initials are those?

2 A. That's from the mail drop location.

3 Q. All right. Now, did you get any results back from the
4 laboratory?

5 A. Yes.

6 Q. And what was the result?

7 A. They were counterfeit.

8 Q. Now, let me show you now what's marked as Government's
9 Exhibit No. 23, 23-A, 24 and 24-A. Again with respect to the
10 Tamiflu -- before I go there, if there was a legitimate
11 package of -- package of legitimate Tamiflu, would you have
12 received it in the packaging?

13 A. It would have been in the boxes with the inserts.

14 Q. Now, looking at Government's Exhibit No. 23 and 23-A,
15 what is that?

16 A. 23 is ten count Tamiflu blister strips absent boxes.

17 Q. All right.

18 A. 23-A is a seven count Zyprexa blister strips without
19 boxes.

20 Q. Any other part of 23 -- let's look at 24 first.

21 Government's Exhibit 24, what is that?

22 A. That's the corresponding way bill.

23 Q. What's the number on this way bill that I described as a
24 shipping label?

25 A. It is EA849177521CN.

1 Q. All right. Government's Exhibit 24-A, what is that?

2 A. The corresponding custody receipt for the aforementioned
3 items.

4 Q. Do you find that same number the way bill as recorded on
5 that?

6 A. Yes, sir, I have.

7 MR. LOUIS: Okay. At this time I move for the
8 admission of Government's Exhibit 23, 23-A, 24 and 24-A?

9 MR. AMANN: I have no objection, Your Honor.

10 THE COURT: Government's Exhibit 23, 23-A, 24 and
11 24-A are admitted.

12 BY MR. LOUIS:

13 Q. I'm going to hand you Government's Exhibit No. 20, which
14 was the email from Mr. Xu with the way bill or shipping
15 number. And then I'm going to hand you Government's Exhibit
16 No. 24 if you can compare them and see if it's contained on
17 Government's Exhibit 20?

18 A. Yes, the email from Mr. Xu, he specifically states that
19 the corresponding way bill for this order, he sent me an email
20 saying that this is the one to expect.

21 Q. Read it into the record?

22 A. Funds --

23 Q. Just the --

24 A. The way bill number?

25 Q. Yes, please.

- 1 A. EA849177521CN.
- 2 Q. All right. And did you also submit a sample of
- 3 Government's Exhibit No. 20, the Tamiflu, off for analysis?
- 4 A. Yes, I did.
- 5 Q. Did you get results back?
- 6 A. Yes.
- 7 Q. What was it?
- 8 A. Counterfeit.
- 9 Q. And 23-A, did you send a sample of Zyprexa out?
- 10 A. Yes, sir, I did.
- 11 Q. And did you get a result back?
- 12 A. Yes, sir, it was counterfeit.
- 13 Q. Now, let me show you what's marked as Government's
- 14 Exhibit No. 25, 25-A and 25-B and 26 and 26-A. First, looking
- 15 at Government's Exhibit that's marked as 25, what is
- 16 Government's Exhibit 25?
- 17 A. Exhibit 25 is seven count blister strips of Zyprexa.
- 18 Q. Government's Exhibit 25-A?
- 19 A. 25-A are boxes of Plavix.
- 20 Q. All right. And is it contained within an evidence bag?
- 21 A. Yes, they are.
- 22 Q. Then Government's Exhibit 25-B?
- 23 A. Incidentally 25, the Zyprexa were contained in boxes and
- 24 they were separated from the boxes. 25-B?
- 25 Q. Casodex, that you have --

1 A. Yes, sir. They are 30 count boxes of Casodex blister
2 strips and the boxes.

3 Q. All right. Then looking at Government's Exhibit No. 26,
4 what is that?

5 A. 26 is the corresponding air way bill.

6 Q. What's the number on the air way bill?

7 A. EA849177549CN.

8 Q. Then 26-A, what is that?

9 A. 26-A is the corresponding custody receipt for the
10 aforementioned items.

11 Q. Did you find that the air way bill number and shipping
12 label number is also recorded on the inventory sheet you have
13 here?

14 A. Yes, it is.

15 MR. LOUIS: At this time I move for the admission of
16 Government's Exhibit No. 25, 25-A, 25-B, 26 and 26-A.

17 MR. AMANN: No objection, Your Honor.

18 THE COURT: They're all admitted.

19 BY MR. LOUIS:

20 Q. And with respect to the very first, 25, the Zyprexa, did
21 you send a sample of the Zyprexa off for analysis?

22 A. Yes.

23 Q. Did you get a result back?

24 A. Yes.

25 Q. What was that?

1 A. Counterfeit.

2 Q. 25-A, did you send a sample of the Plavix off for
3 analysis?

4 A. Yes.

5 Q. Again, Plavix, is that manufactured by Sanofi aventis?

6 A. Yes, it is.

7 Q. And what was the result of that test?

8 A. Counterfeit also.

9 Q. Did you also send a sample of the Casodex, Government's
10 Exhibit 25-B.

11 A. Yes.

12 Q. And what was the result of that?

13 A. That was also deemed to be counterfeit.

14 Q. All right. Now, looking at Government's Exhibit 26 --
15 again, what is Casodex used for?

16 A. Casodex is a cancer treatment drug.

17 Q. All right. Let's look at Government's Exhibit No. 26.

18 Again, do you find -- what's the date on this -- the air way
19 bill, Government's Exhibit 26?

20 A. 4-10 of 2007.

21 Q. And do you see Mr. Xu's name anywhere on this air way
22 bill?

23 A. No, I do not.

24 Q. Do you see the name Orient Pacific International
25 anywhere?

1 A. No, I do not.

2 Q. And who is it sent to?

3 A. Sent to Mr. Ed, Tri State Distributors in Houston.

4 Q. And did you also -- I don't know if I had you look at
5 Government's Exhibit No. 20, but I'll have you do it now. See
6 if you can find that same air way bill number on the email
7 Mr. Xu sent you.

8 A. Yes, it is the same air way bill number provided in the
9 email from Mr. Xu, the identical way bill that he sent to me
10 on April 9th, 2007.

11 Q. Can you read it for the record, please?

12 A. EA849177549CN.

13 Q. All right. And let's go back to Government's Exhibit
14 No. 24 for a minute. And is this another air way bill that we
15 talked about, shipping label?

16 A. Yes, sir.

17 Q. And do you see Mr. Xu's name anywhere on this shipping
18 label?

19 A. No, sir.

20 Q. Do you see the name Orient Pacific International anywhere
21 on there?

22 A. No, sir, I do not.

23 Q. And this air way bill corresponded, did it not, to the
24 Tamiflu and Zyprexa that we looked at previously?

25 A. Yes, sir.

1 Q. And what's the date on this shipping label, air way bill?

2 A. 4-8-2007.

3 Q. What's the date it was received?

4 A. 4-11-2007.

5 Q. And in the box that says name and contents, what's shown
6 there?

7 A. Cafe, looks like.

8 Q. Okay. Now, let me show you what's marked as Government's
9 Exhibit No. 27 and ask you to take a look at this and tell us
10 what it is.

11 A. Email from Kevin Xu to our undercover account, Tri State
12 Distributors.

13 Q. What is the date of that?

14 A. April 17, 2007.

15 MR. LOUIS: At this time I'd move for the admission
16 of Government's Exhibit No. 27.

17 MR. AMANN: No objection.

18 THE COURT: It is admitted.

19 MR. LOUIS: Could we have that up there, please?

20 BY MR. LOUIS:

21 Q. And what's the date of this email?

22 A. It was April 17th, 2007.

23 Q. And who is it from?

24 A. Kevin Xu.

25 Q. And what is -- who's it to?

1 A. Tri State Distributors, our undercover entity.

2 Q. What's the subject?

3 A. Further news.

4 Q. Please read the contents of the email.

5 A. "Dear Ed,

6 "Have not heard from you for a long time. I think
7 you have received our products, what's the further news from
8 your client, if so, pls let me know.

9 "b.rgs.

10 "Kevin."

11 Q. Now, let me show you what's marked as Government's
12 Exhibit 28, 28-A, 28-B, would you take a look at that first
13 and see if you can find Government's Exhibit 28.

14 A. Yes, sir.

15 Q. What is Government's Exhibit 28.

16 A. Seven count Zyprexa blister strips with corresponding
17 boxes.

18 Q. Is it contained within an evidence bag?

19 A. Yes, sir, it is.

20 Q. Then Government's Exhibit 28-A, first of all, how many
21 bags are marked with Government's Exhibit 28?

22 A. Two bags because they wouldn't fit in one bag.

23 Q. And there are -- again, is that Zyprexa?

24 A. Yes, sir.

25 Q. Then Government's Exhibit 28-A, what is that?

1 A. More Zyprexa, seven count blisters and without the boxes.

2 Q. Okay.

3 A. They were in the boxes, but the boxes are packed
4 separate.

5 Q. And then Government's Exhibit 28 -- so you do have part
6 of Government's Exhibit No. 28-A, you've got the pills and
7 then you have the packaging?

8 A. The boxes, yes, sir.

9 Q. All right. They're Government's Exhibit 28-B.

10 A. It's 28 count blister packs of Plavix contained in the
11 boxes and it's contained in three evidence bags.

12 Q. All right. Then let me show you what's marked as
13 Government's Exhibit 29, 29-A. First, what is Government's
14 Exhibit 29?

15 A. 29 is the corresponding air way bill.

16 Q. And what about 29-A?

17 A. The custody receipt.

18 Q. Can you read the air way bill number that's on
19 Government's Exhibit 29?

20 A. EA849177552CN.

21 Q. And is that the same number that's recorded on the
22 inventory log?

23 A. Yes, it is.

24 MR. LOUIS: All right. At this time I move for the
25 admission of Government's Exhibit 28, 28-A, 28-B and 29, 29-A.

1 MR. AMANN: No objection, Your Honor.

2 THE COURT: They are all admitted.

3 BY MR. LOUIS:

4 Q. Now, with respect to Government's Exhibit 28, the Zyprexa
5 seven count, did you also send a sample of the Zyprexa off for
6 analysis?

7 A. Yes, sir.

8 Q. And who's the manufacturer of Zyprexa?

9 A. Ely Lilly, sir.

10 Q. What was the result of the test?

11 A. Counterfeit.

12 Q. Did you also send a sample of these Zyprexa -- is it -- I
13 forgot the count -- what's the count on the second --

14 A. Plavix?

15 Q. No, the Zyprexa, the seven count and you also have the --
16 is it ten count?

17 A. Yes, sir.

18 Q. And what was the result of the test on that?

19 A. I have to look at the -- I don't recall if I sent one of
20 seven and one of the ten.

21 Q. Looking at Government's Exhibit No. 28, I believe, A, did
22 you send a sample of that off for analysis?

23 A. I don't recall if it was the seven or ten or both count.

24 Q. Okay. Then with respect to the Plavix, did you send a
25 sample of the Plavix off for analysis?

1 A. Yes, that's correct.

2 Q. What was the result of that?

3 A. The Plavix is also counterfeit.

4 Q. I'm going to hand you what's marked as Government's

5 Exhibit 29. Can you tell us what that exhibit is?

6 A. 29 is an air way bill.

7 Q. I'm sorry. I handed you the wrong thing.

8 Government's Exhibit No. 30, let me first say

9 Government's Exhibit No. 30, what is that?

10 A. That is an email from Kevin Xu to Tri State Distributors,

11 our undercover entity with attachment with a picture of

12 Aricept drugs.

13 Q. Was this taken from your computer?

14 A. Yes, it was, sir.

15 MR. LOUIS: At this time I move for the admission of

16 Government's Exhibit No. 30.

17 MR. AMANN: No objection, Your Honor.

18 THE COURT: It's admitted.

19 MR. LOUIS: Could we have that displayed?

20 Thank you.

21 BY MR. LOUIS:

22 Q. Can you please read the date?

23 A. May 5th, 2007.

24 Q. Who is it from?

25 A. Kevin Xu.

1 Q. What's the email address?

2 A. Kevinxl07@gmail.com.

3 Q. And to Tri State Distributors?

4 A. Yes, sir.

5 Q. And what's the subject?

6 A. Future U.S. trip.

7 Q. Now, when did the discussion of a trip come into play?

8 A. From the moment I met him in Bangkok.

9 Q. And what would be the purpose of Mr. Xu traveling to meet
10 you here in the United States?

11 A. When he discussed in Bangkok it was pursuant to other
12 business ventures he had and also, subsequent to that, to meet
13 me and to purchase a diamond with his wife with a budget of
14 \$26,000 for the stone.

15 MR. AMANN: Your Honor, this is not relevant to this
16 case at all.

17 THE COURT: Well, it's not prejudicial either.

18 Let's move on.

19 BY MR. LOUIS:

20 Q. Can you read the contents of the email, please, sir.

21 A. "Dear Ed,

22 "Thanks for your email.

23 "This month, we start to produce Casodex of English
24 version, US\$70/box. Also, we have another new item Aricept
25 10mg, pls see attached photos for your reference, price

1 US\$58/box.

2 "Besides, in May, we can supply Tamiflu, Plavix,
3 Zyprexa, Cialis, Levitra, Viagra.

4 "Hope to receive your further news.

5 "b.rgs.

6 "Kevin."

7 Q. Now, if you know, I'm not sure you're aware of this, but
8 was May the 5th, 2007 the first time that Casodex was on the
9 market here in the United States?

10 A. I'm not aware of the exact date Casodex was on the
11 market. To my knowledge, it's been around.

12 Q. Mr. Xu's indicating he's going to obtain it from
13 somewhere else or what is he going to do?

14 THE COURT: It speaks for itself.

15 MR. LOUIS: I'll move on. Thank you.

16 BY MR. LOUIS:

17 Q. Let's look at Government's Exhibit --

18 MR. LOUIS: Let's scroll down a little bit. I can't
19 see it.

20 BY MR. LOUIS:

21 Q. Did Mr. Xu send a picture of the Aricept in this email.

22 A. Yes, he did.

23 Q. Now, let me let you take a look at Government's Exhibit
24 No. 60, which within Government's Exhibit No. 60 is marked
25 with Nos. 5 and 6. Would you describe what those are, please?

1 A. Those are Aricept tablets in a blister pack with a folded
2 box for the Aricept above it.

3 Q. And then what's the number on that picture?

4 A. The number is No. 5.

5 Q. What about No. 6?

6 A. No. 6 is another picture. On top is the Aricept blister,
7 bottom up. The -- in the middle is the Aricept box assembled
8 but opened on both ends. On the bottom is the Aricept blister
9 pack tablets up. And to the right of it is the -- what
10 appears to be literature on No. 6.

11 Q. Is it positioned the same as the email that Mr. Xu sent
12 you, if you look at --

13 A. Picture No. 6 in the setup with the blister pack, box and
14 with blister on both sides and the literature to the right of
15 it is identical in the email as the picture that was found on
16 Mr. Xu's computer.

17 Q. And Government's Exhibit No -- was it 30, the email?

18 A. The email was 30, correct.

19 Q. You actually printed out or clicked that picture and
20 printed it out, didn't you?

21 A. Yes, sir.

22 Q. All right. So let's go to the next image -- I think we
23 can see it. In comparing that with the picture that was
24 obtained from Mr. Xu's computer, is that the same -- appear to
25 be the same picture?

1 A. Appears to be, yes, sir.

2 MR. LOUIS: At this time I move for the admission of
3 Government's Exhibit 60, which is marked with the Nos. 5 and
4 6.

5 MR. AMANN: Again, you don't -- with the Court's
6 permission -- you don't know who took these pictures, 5 and 6?

7 THE WITNESS: No, sir.

8 MR. AMANN: You don't know when they were taken?

9 THE WITNESS: No, sir.

10 MR. AMANN: You have no personal knowledge of who
11 took it, when they were taken or the contents of the picture
12 itself, do you?

13 THE WITNESS: I know what the contents are. It's a
14 picture of --

15 MR. AMANN: The pictures, but you don't know --

16 THE WITNESS: I know the pictures, yes.

17 MR. AMANN: Yes, you know the pictures.

18 I would object, Your Honor, it's not been properly
19 authenticated and it's not relevant.

20 THE COURT: The objections are overruled. Items 5
21 and 6 of Government's Exhibit 60 are admitted.

22 MR. LOUIS: Can you go to Government's Exhibit No. 60
23 and display No. 6 for us.

24 A. I'm sorry, 36?

25

1 BY MR. LOUIS:

2 Q. Oh, no. Within Government's No. 60, this is the picture
3 that you were just looking at that I have in my hand.

4 A. I'm sorry, could you repeat that?

5 Q. This is a picture that you were just looking at?

6 A. Yes, sir, it was.

7 Q. This is No. 6 of Government's Exhibit No. 60; is that
8 correct?

9 A. Yes, sir, that's correct.

10 Q. All right. Now, let me hand you what's marked as
11 Government's Exhibit No. 31. I may have handed it to you.

12 A. I have it, sir.

13 Q. All right. Would you tell us what Government's Exhibit
14 No. 31 is?

15 A. It's an email from Tri State Distributors undercover to
16 Kevin Xu.

17 MR. LOUIS: At this time I move for the admission of
18 Government's Exhibit 31.

19 THE COURT: Is there any objection?

20 MR. AMANN: No objection, Your Honor.

21 THE COURT: It's admitted.

22 BY MR. LOUIS:

23 Q. Looking at Government's Exhibit 31, what is the date?

24 A. 29th May 2007.

25 Q. From whom?

1 A. Tri State Distributors, our undercover entity.

2 Q. And to whom?

3 A. To kevinxl07, Kevin Xu.

4 Q. And would you read the email for us, please?

5 A. "Hello Kevin.

6 "I hope everything is all right with the Europe
7 problem? I have gotten a couple of inquiries from my
8 customers about it. Hopefully we can straighten these
9 problems with Zyprexa out because I think it could be a major
10 seller for this market. I am trying to reassure my clients.
11 They are asking for Zyprexa in United States packaging only
12 under the circumstances where you can provide it with a unique
13 lot number on the blister and box. The lot number requested
14 is A319745 expiring in September 2010. How long will it take
15 to fill an order with the requested lot number and expiration
16 date? Please let me know and we will put in the order as we
17 discussed earlier and send out the money."

18 Q. First, can you request whatever lot number and expiration
19 date you want?

20 A. Absolutely not. That's assigned by the legitimate
21 pharmaceutical manufacturer.

22 Q. And when you were talking about this Europe problem, is
23 that further discussed in this email?

24 A. I'm sorry?

25 Q. The Europe problem that you're referencing here, what is

1 the Europe problem?

2 A. Shortly before this email was sent, there was several
3 what they call class one product recalls, counterfeit drugs.

4 MR. AMANN: Your Honor, I object to this stage. I
5 think that's subject to the motion in limine.

6 THE COURT: It is, but I think this is intrinsic
7 evidence. The objection is overruled.

8 MR. AMANN: Judge, not to quarrel with the ruling,
9 but I'd ask just to engage in a 403 balancing test.

10 THE COURT: I don't think *Beechum* applies. I think
11 this is intrinsic evidence.

12 MR. AMANN: Thank you, Your Honor.

13 BY MR. LOUIS:

14 Q. You may continue your response.

15 A. I forgot the question. I'm sorry.

16 Q. The question was: When you mentioned in the email, "hope
17 everything is all right with the Europe problem," what are you
18 talking about?

19 A. There were class one -- what they call class one product
20 recalls of pharmaceutical drugs -- branded pharmaceutical
21 drugs that entered the legitimate supply chain of the United
22 Kingdom that were, let's say, hospitals, pharmacies, that were
23 recalled.

24 MR. LOUIS: Okay. Let's further scroll down in the
25 email.

1 BY MR. LOUIS:

2 Q. Can you read the next portion of the email there?

3 A. I'm sorry, where are we at now?

4 Q. Where is says "Dear Ed."

5 A. "Dear Ed,

6 "Also reminder you again for Casodex 50mgs 28 tabs
7 and Plavix 75mgs, 28 tabs, which is popular now in the market,
8 check with you clients.

9 "b.rgs.

10 "Kevin."

11 Q. And let's go further down.

12 A. Uh-huh.

13 Q. Now, the top heading, can make -- do you know who's
14 sending this and who's receiving this email?

15 A. Would you point out which one you're referring to?

16 Q. This caption we have highlighted. Is that you sending an
17 email to Mr. Kevin Xu?

18 A. Yes.

19 Q. And read the caption that you have there.

20 A. "Zyprexa problem IMPORTANT."

21 Q. Okay. Would you read the email for us, please, that
22 portion?

23 A. "Hello Kevin:

24 "Okay, no problem. I do not think this will impact
25 us because we have not sold to Europe as per your request. I

1 will let you know if I hear more and will you please do the
2 same.

3 "Edwardo."

4 MR. LOUIS: Let's scroll down a little further.

5 BY MR. LOUIS:

6 Q. And is this the email from Mr. Kevin Xu?

7 A. Yes.

8 Q. Can you read that portion for us?

9 A. "Dear Eduardo.

10 "Thank you for your email.

11 "Yes, we have checked our old channel in EU for your
12 following matter, which is true and now there are some
13 confused problems during EU market for Zyprexa, so don't sell
14 to EU market now for Zyprexa."

15 Q. Were you selling to the EU market?

16 A. We weren't purporting to sell there, no. We were
17 specifically told by him not to.

18 Q. Told by whom?

19 A. Told by Mr. Xu.

20 Q. That you should not sell to the EU market?

21 A. That's right.

22 Q. Is there any further part of Government's Exhibit

23 No. 31 -- is there another part of it or is that the entire
24 mail?

25 A. If you go down a little further -- oh, no, that's No. 1

1 now.

2 Q. Go to the next one.

3 A. No. 2 is --

4 Q. All right. And what else is Mr. Xu indicating at the
5 top?

6 A. "Ok." And this is the end of -- this is from Kevin.

7 "Ok, we agree your cancel of Zyprexa' order for EU
8 market."

9 Q. And this is the same email portion of it that you read
10 earlier?

11 A. Right.

12 Q. Your email and his response?

13 A. Right.

14 MR. LOUIS: Let's now go to --

15 THE COURT: Are you through with 31?

16 MR. LOUIS: Yes, Your Honor.

17 THE COURT: We're going to take our noon recess.
18 Would counsel approach the bench a minute?

19 (A bench conference was held outside the presence of
20 the jury.)

21 THE COURT: Are you ready to talk about the charge?
22 I asked you-all to be prepared and I haven't received
23 anything.

24 MR. LOUIS: I read his charge. I mean, you asked him
25 to prepare something that he prepared and I took a look at it.

1 I think I already sent it.

2 MR. AMANN: We filed a verdict form.

3 THE COURT: I haven't seen it.

4 MR. AMANN: Well, I've got a hard copy.

5 THE COURT: That's okay. We'll talk about it now.

6 (Bench conference concluded.)

7 THE COURT: All right. We're going to stand in
8 recess until 1:15, ladies and gentlemen. I'd remind you not
9 to talk to anyone or allow anyone to talk to you.

10 (Outside the presence of the jury.)

11 THE COURT: Be seated please.

12 First of all, with respect to the previous evidence
13 dealing with the EU problem, alternatively I conclude that if
14 the evidence is not intrinsic and it's subject to the
15 balancing test articulated by the Fifth Circuit in *United*
16 *States versus Beechum*, I conclude that if it is extrinsic
17 evidence it is, nevertheless, relevant to the issues in this
18 case and in particular to the defendant's motive and
19 knowledge, it is not relevant to defendant's character and any
20 potential prejudice is far outweighed by the relevance.

21 Now, let's look at the charge. There's just a couple
22 of questions that I noticed in looking at the party
23 submissions.

24 Government referred to an instruction dealing with
25 summaries. What summaries are you intending to offer?

1 MR. LOUIS: It's really not -- there are two
2 exhibits. I don't know if they're really summaries, but out
3 of an abundance of caution, I put the instruction in their
4 chart of comparison of the cost of the retail value of the
5 pharmaceuticals in issue and the actual price that was paid by
6 Mr. Xu.

7 THE COURT: Is there going to be underlying evidence
8 that will be -- in other words, are these true summaries of
9 underlying evidence or will the items contained in the
10 summaries not otherwise be in evidence?

11 MR. LOUIS: No, it will be in evidence.

12 THE COURT: Okay. Secondly, is the defendant's
13 proposed lesser included offense acceptable to the Government,
14 that instruction.

15 MR. LOUIS: I have looked at it and I think it, for
16 the most part, is appropriate.

17 THE COURT: Well, the most part concerns me. I don't
18 want you to tell me after I've read it to the jury that it's
19 not acceptable.

20 MR. LOUIS: Let me take a look at it.

21 THE COURT: Let me have your proposed verdict form,
22 please.

23 MR. AMANN: Judge, it's lacking a stapler.

24 THE COURT: That's all right. I don't use staples
25 anyway.

1 MR. AMANN: Okay.

2 MR. LOUIS: Your Honor, his proposed instruction is
3 acceptable.

4 THE COURT: Okay.

5 MR. LOUIS: I'm looking at the verdict form now, Your
6 Honor.

7 THE COURT: No. We're now -- he has another
8 objection with respect to Government's proposed instruction on
9 Counts 5 through 9. The defendant has an objection and they
10 suggest that there's an additional element to be included.

11 MR. AMANN: Your Honor, which requested jury
12 instruction?

13 THE COURT: The one dealing with trafficking in
14 counterfeit goods, Nos. 5 through 9. Your pages aren't
15 numbered so I can't give you a page number.

16 MR. LOUIS: If it's filed, it will be Page 20 of 26.

17 THE COURT: Basically they want a fifth item that
18 says that the use of the counterfeit mark was likely to cause
19 confusion, to cause mistake or to deceive which appears to be
20 included within 18 USC, Section 2328.

21 MR. LOUIS: That's fine, Your Honor.

22 THE COURT: All right. Now, there's also an
23 objection by the defendant to the definition of counterfeit
24 mark. But that's not the definition submitted by the
25 Government. If you compare the Government's proposed

1 definition of counterfeit mark, it doesn't appear to contain
2 the language that the defendant objects to. You probably need
3 to compare.

4 MR. AMANN: I found it, Your Honor. I guess in our
5 objection what we did was we red lined what the Government had
6 submitted.

7 THE COURT: I'm not making myself clear. You're red
8 lining what the Government did not submit. You've taken a
9 hypothetical charge and objected to it. That's not what the
10 Government submitted. That's my confusion. Look at what the
11 Government submitted, please.

12 MR. LOUIS: Do you have it, Colin?

13 THE COURT: It's Page 20 of 26 of the Government's
14 submission.

15 MR. AMANN: May I approach, Your Honor, so I can
16 explain because I'm trying to make two ends meet.

17 THE COURT: Maybe I'm not reading it correctly.

18 MR. AMANN: I think this is the Government's request
19 here --

20 THE COURT: Right.

21 MR. AMANN: -- that I had registered trademark and
22 the use of which is likely to cause mistake, confuse or
23 deceive.

24 THE COURT: But they don't have the other language.

25 MR. AMANN: Right. What I did was, I -- maybe I was

1 not clear and I apologize -- I objected to that being included
2 and am submitting as an alternative this definition.

3 THE COURT: Okay. I understand it.

4 MR. AMANN: I'm sorry.

5 THE COURT: That's all right.

6 What is the Government's response to their proposed
7 changes on the definition of counterfeit mark?

8 MR. LOUIS: Let me look up theirs.

9 MR. AMANN: Here it is. I've got it.

10 THE COURT: Tell you what, this may not be an
11 efficient use of everybody's time. Y'all look at it today and
12 if there's not an agreement -- if there's an agreement, then I
13 would like you to deliver to my law clerk at 8:20 in the
14 morning, the agreed language. If there's not an agreement,
15 you each deliver to my law clerk at 8:20 tomorrow morning your
16 proposed language and some law explaining why your language is
17 superior to your opponent's.

18 MR. AMANN: Yes, sir.

19 THE COURT: Okay. We'll do it that way. Those are
20 the only other problems I saw with the charge so I'll give you
21 a copy probably by noon tomorrow.

22 Anything else before we adjourn for lunch?

23 MR. LOUIS: Just what time?

24 THE COURT: 1:15.

25 MR. LOUIS: Thank you, Your Honor.

1 THE COURT: Are you about through with him?

2 MR. LOUIS: Almost.

3 THE COURT: You keep telling me that.

4 Okay. We'll stand in recess until 1:15.

5 (There was a lunch recess taken.)

6 THE COURT: Please be seated.

7 Mr. Lewis, you may continue.

8 BY MR. LOUIS:

9 Q. Agent Sherman, let me hand you what's marked as
10 Government's Exhibit Nos. 33 and 34 -- I'm sorry, 34, 35 and
11 36 and ask you to take a look at those exhibits.

12 And Government's Exhibit No. 30 -- I'm sorry,
13 Exhibit 33 -- did I hand you Government's Exhibit 33?

14 A. No, you have not, sir.

15 Q. Okay. Let's look at Government's Exhibit 33. First,
16 please, describe what that exhibit is for the record.

17 A. That's an email dated May 31st, 2007, for the Tri State
18 Distributors, our undercover company, to Kevin Xu.

19 MR. LOUIS: All right. At this time I move for the
20 admission of Government's Exhibit 33.

21 MR. AMANN: No objection, Your Honor.

22 THE COURT: It's admitted.

23 MR. LOUIS: Can we play that for the jury.

24 BY MR. LOUIS:

25 Q. What's the date of this email?

1 A. May 31st, 2007.

2 Q. And what's the -- who's it from?

3 A. Tri State Distributors.

4 Q. And can you read the substance of the email, please.

5 A. Yes, sir. Subject is order May 31st, 2007.

6 Q. Go ahead and read what it says.

7 A. "Hi Kevin.

8 "I have the following order of samples I need for my
9 clients.

10 "1. Tamiflu: 150 strips = \$3300 USD.

11 "2. Aricept: 20 boxes = \$1160 USD.

12 "3. Plavix: 20 boxes = \$760 USD.

13 "Total \$5220.

14 "I sent this out today via wire transfer from my
15 tri-state account. Confirmation number is
16 FW-06787-151-451897. Please confirm receipt and provide
17 tracking number. As before please send the order to my
18 address.

19 "TRI STATE DISTRIBUTORS ATTN: Ed.

20 "1806 FM 1960 West #630.

21 "Houston, Texas USA 77090."

22 "Regarding Zyprexa, the product is in demand here but
23 my customers are concerned about the situation in Europe and
24 want to wait and see what happens over there before making a
25 commitment. I told my customers that I would not burden you

1 with a custom lot number request until they were certain they
2 would buy the Zyprexa. Once things calm down I think this
3 will be a major seller. I will keep you posted. Remember I
4 will be traveling from mid June to early July so please fill
5 this order fast so I can lock in orders for you with my
6 customers.

7 "Thank you.

8 "Ed."

9 Q. All right. Now, before the break we were talking about
10 the recall in -- I believe, did you say the UK?

11 A. Yes, United Kingdom.

12 Q. All right. Let me hand you what's marked as Government's
13 Exhibit No. 32 and ask you to look at Government's Exhibit
14 No. 32 and tell us if you're familiar with what's in that
15 exhibit.

16 A. Yes, those are recalls from the United Kingdom, the
17 Medicines and Healthcare Products Regulatory Agency, which is
18 the United Kingdom's counterpart of the Food and Drug
19 Administration, the FDA, called the MHRA.

20 Q. And did you have an occasion to contact that particular
21 agency?

22 A. Yes, sir, I did.

23 MR. LOUIS: Okay. At this time I move for the
24 admission of Government's Exhibit No --

25

1 BY MR. LOUIS:

2 Q. And where did you -- did you find this document in
3 Mr. Xu's computer?

4 A. Copies of it were found on Mr. Xu's computer, yes.

5 MR. LOUIS: At this time I move for the admission of
6 Government's Exhibit No. 33.

7 THE COURT: Did you say 32 or 33?

8 MR. LOUIS: 33.

9 THE COURT: 33 is already in.

10 MR. LOUIS: I'm sorry, 32.

11 MR. AMANN: Thank you.

12 Agent Sherman, do you know who authored this report,
13 for lack of a better word?

14 THE WITNESS: That is a recall alert from the MHRA.

15 MR. AMANN: Are you familiar with how the MHRA works?

16 THE WITNESS: That's a broad question, sir. Could
17 you be more specific?

18 MR. AMANN: Okay. Do you know who authored this, the
19 person?

20 THE WITNESS: I don't know the specific author. I
21 know that was an agency release.

22 MR. AMANN: Your Honor, I'm going to object to
23 Government 32. I believe it's hearsay and I believe it's not
24 relevant to any issues in this case.

25 THE COURT: It is hearsay, but I'm going to admit it

1 for the limited purpose of showing if the jury believes the
2 items on the computer were Mr. Xu's, that Mr. Xu would have
3 had knowledge of this document. That's the limited purpose
4 for which it's admitted. Whether the document states matters
5 that are true or not is not relevant. The only issue is if
6 you decide that Mr. Xu was aware of the contents of the
7 computer, you may also decide he was aware of what this
8 document says, whether or not it was true.

9 MR. LOUIS: Thank you, Your Honor.

10 At this time could you pull up Government's exhibit
11 No. 32.

12 BY MR. LOUIS:

13 Q. Now, the very first page of Government's Exhibit No. 32,
14 there is a caption at the top that says MHRA. Do you know
15 what that stands for?

16 A. It's the Medicines and Healthcare Products Regulatory
17 Agency.

18 Q. And did you actually contact or meet with officials from
19 that particular agency?

20 A. We both contacted and had meetings with investigative
21 officials of the MHRA.

22 Q. Okay. And reading what says "Counterfeit Parallel
23 Distributed Product," can you read the particular lot numbers
24 that's associated -- first of all, which drug is this
25 referring to?

1 A. This is referring to Zyprexa ten milligrams.

2 Q. What particular lot numbers is this referring to?

3 A. A200127, A216454 and A229505.

4 Q. All right. Now, I'm going to hand you what's marked as
5 Government's Exhibit No. 4, Part 4, that has the packaging and
6 see if you find any packaging that has the lot numbers as
7 referenced there.

8 A. I don't know if it's in this batch.

9 Q. Let me hand you what's marked as Government's Exhibit 28,
10 which also has packaging and Zyprexa and see if you find it
11 within that exhibit.

12 A. Yes. In this particular package -- and this is Exhibit
13 No. 28 -- Zyprexa boxes and seven count blister packs of Lot
14 No. A229505 and it is also on the blister packs.

15 Q. All right. Thank you.

16 MR. LOUIS: Now, if we can quickly scroll down.

17 BY MR. LOUIS:

18 Q. And just read the very first paragraph.

19 A. "This counterfeit material was supplied in French livery
20 via parallel distributors into the UK supply chain. Both
21 genuine Lilly manufactured product and counterfeit product may
22 be present in the UK supply chain. Stock presenting a patient
23 risk may be present as French livery cartons with an overlabel
24 applied by a parallel distributor or has been recartoned into
25 an English carton by the parallel distribution repacking

1 process.

2 "All the above lots are genuine Lilly lot numbers for
3 which the original lots were all supplied to France in French
4 livery."

5 Q. All right. Now, let's go to -- let's go then to Page
6 No. 4 of this Exhibit 32. And what particular drug is
7 referenced with this recall?

8 A. This is 75 milligrams of Plavix.

9 Q. And what numbers are the subject of the recall?

10 A. Numbers of the recall are Lot 3098 and 6Y098.

11 Q. I'm going to hand you what's marked as Government's
12 Exhibit No. 6 and ask you to take a look at Government's
13 Exhibit No. 6 and see if you find any of those lot numbers
14 present.

15 A. Yes, 3098, Lot No. 3098 is on the aluminum blister pack
16 foil.

17 Q. And, again, we have the same information with respect to
18 the second paragraph of Page 4 that was on the first page of
19 Government's Exhibit No. 32?

20 A. Yes.

21 Q. Then if we can go now to Page 7 within this exhibit, what
22 drug is referenced here?

23 A. That is 50 milligrams Casodex.

24 Q. What is the lot number that's referenced there?

25 A. 65520.

1 Q. And if you will look at Government's Exhibit 25-B,
2 package containing Casodex and see if you find that lot
3 number.

4 A. Yes, it's on the foil blister pack of the Casodex
5 provided by Mr. Xu as found in Exhibit 25-B. And it's hard to
6 tell on -- the quality's poor on the actual box, but it's on
7 the blister pack, the identical lot number.

8 Q. Okay. All right, sir. Now, let me refer you then to
9 Government's Exhibit No. 34. Take a look at that exhibit.

10 A. Yes, sir.

11 Q. And what is Government's Exhibit No. 34?

12 A. That is a wire transfer from the bank -- or Bank Wells
13 Fargo from Tri State Distributors dated May 31st, 2007, to
14 Orient Pacific International for a total of 5,220 USD.

15 MR. LOUIS: At this time I move for the admission of
16 Government's Exhibit No. 34.

17 MR. AMANN: No objection, Your Honor.

18 THE COURT: It's admitted.

19 BY MR. LOUIS:

20 Q. This is another wire transfer?

21 A. Sir, could you repeat that?

22 Q. Is this another wire transfer?

23 A. Yes, it is.

24 Q. What's the date of the wire transfer?

25 A. The date of the wire transfer is May 31st, 2007.

1 Q. What's the amount that's reflected on the wire transfer?

2 A. \$5,220.

3 Q. And who is this wire being sent to?

4 A. Orient Pacific International, Limited.

5 Q. Is that the same bank information that was provided to
6 you by Mr. Xu?

7 A. Yes, it is.

8 Q. Now, looking at Government's Exhibit No. 35, can you tell
9 us what that is in that exhibit?

10 A. That is an email from Kevin Xu to Tri State Distributors
11 dated June 1st, 2007.

12 MR. LOUIS: All right. At this time I move for the
13 admission of Government's Exhibit No. 35.

14 MR. AMANN: No objection, Your Honor.

15 THE COURT: It's admitted.

16 BY MR. LOUIS:

17 Q. What's the date of this email?

18 A. June 1st, 2007.

19 Q. Is it acknowledging the receipt of the money?

20 A. Yes, it is.

21 Q. Let's move to Government's Exhibit No. 36. What is
22 Government's Exhibit 36?

23 A. Email from kevinxl07 to Tri State Distributors.

24 Q. And was that email taken from your computer?

25 A. Yes, it was.

1 MR. LOUIS: At this time we'll move for the admission
2 of Government's Exhibit No. 36 -- 35, which one?

3 MR. AMANN: 36.

4 MR. LOUIS: 36?

5 MR. AMANN: Yes.

6 No objection, Your Honor.

7 THE COURT: Government's 36 is admitted.

8 BY MR. LOUIS:

9 Q. And what is he referencing in Government's Exhibit 36?

10 A. That's visit schedule.

11 Q. What's the date of this email?

12 A. July 8th, 2007.

13 Q. Now, I'm going to hand you what's marked as Government's
14 Exhibit No. 37 and ask you to take a look at what is in
15 Government's Exhibit 37. It could be 37, 37-A, 37-B.

16 A. 37 is Aricept blister packs and 10 milligrams of Aricept
17 blister packs and 28 count and corresponding boxes.

18 Q. Then Government's Exhibit 37-A?

19 A. Plavix 28 count blister packs and corresponding boxes.

20 Q. 37-B?

21 A. Loose ten count Tamiflu blister packs.

22 Q. Now, I'm going to hand you Government's Exhibit 38, 38-A.
23 And what is Government's Exhibit 38?

24 A. It is an EMS air way bill for the respective shipment.

25 Q. And 38-A, what is that?

1 A. It's the corresponding chain of custody.

2 MR. LOUIS: At this time I move for admission of
3 Government's Exhibit 37, 37-A, 37-B, 38 and 38-A.

4 MR. AMANN: No objection, Your Honor.

5 THE COURT: They're all admitted.

6 MR. LOUIS: We can have published 38.

7 BY MR. LOUIS:

8 Q. Looking at Government's Exhibit No. 38, can you read for
9 us what is the shipping label number?

10 A. EA852921562CN.

11 Q. And who is this shipment from? It's hard to read. I'll
12 give you the original.

13 A. Looks like Ming dong feng.

14 Q. Again, do you see the name Kevin Xu or Orient Pacific
15 International anywhere on this?

16 A. No, I do not.

17 Q. And at the bottom do you see what the declared amount is?

18 A. \$15.

19 Q. Now, looking at Government's Exhibit No. 37-A with
20 respect to the Plavix, what is the -- can you tell us what the
21 lot number is on that?

22 First of all, can you make out the lot number on the
23 box?

24 A. No, the embossing is poor quality.

25 This particular one looks like 3098.

1 Q. And was that the same number, if you can recall, that was
2 on --

3 A. I have to look at that again.

4 Q. -- part of the recall.

5 Okay. Looking at Government's Exhibit 32, Page 4, do
6 you find that same number?

7 A. Exhibit --

8 Q. Exhibit 32.

9 A. Exhibit 32, Page 4, okay. Yes, on the MHRA recall drug
10 alert, Lot No. 3098 is featured on that as offending lot
11 number.

12 Q. Okay. All right. Now, did you also send samples of
13 Government's Exhibit 37, 37-A and 37-B to a lab for analysis?

14 A. Yes, I have, sir.

15 Q. And what was the result?

16 A. They were deemed counterfeit.

17 Q. All right. Now, the email -- we were looking at an email
18 that discussed, I believe, travel to the United States.

19 A. Yes, sir.

20 Q. And after receiving these shipments, these test
21 shipments, what was going to be the next focus of your
22 investigation?

23 A. Well, the purpose of these shipments was to ascertain
24 whether Mr. Xu could provide quality samples in a timely
25 manner of drugs that were ordered. Once we ascertained that,

1 indeed, was the case, we were going to have a meeting and
2 solidify the relationship and start commencing large scale,
3 high volume orders.

4 Q. All right. Let me hand you then what's marked as
5 Government's Exhibits 39, 40, 41, and 42 -- I'm sorry, can you
6 first identify Government's Exhibit 39 for us, please.

7 A. Sorry, can you repeat that?

8 Q. Can you identify the exhibit for us, please?

9 A. 39 is an email from kevinxl07 to Tri State Distributors.

10 Q. All right. And that came off your computer?

11 A. Yes.

12 Q. And then Government's Exhibit No. 40, if you will look at
13 Government's Exhibit 40 and 41, I think 42, are they all
14 emails that came from your computer based on communications
15 back and forth with Mr. Xu?

16 A. Yes, sir, they are.

17 MR. LOUIS: All right. At this time we move for
18 admission of Government's Exhibit Nos. 39, 40, 41, and 42.

19 MR. AMANN: May I have a moment to talk with counsel?

20 No objection, Your Honor.

21 THE COURT: All right. Exhibits 39, 40, 41 and 42
22 are all admitted.

23 BY MR. LOUIS:

24 Q. Looking first to Government's Exhibit No. 39, what's the
25 date of this email?

1 A. July 12, 2007.

2 Q. And who sent the email?

3 A. Kevinxl07@gmail.

4 Q. And is that Mr. Kevin Xu?

5 A. Yes.

6 Q. And then what is the subject of this email?

7 A. New product list update.

8 Q. Please read it for us.

9 A. "Dear Ed.

10 "Please see our attached update product list for your
11 reference.

12 "This month, we are developing on one famous oncology
13 medicine called Gleevec, maybe your client interets on it,
14 which is a very good medicine.

15 "Most of our medicines are european packs, we have
16 sole agent in european market also, so let your clients know,
17 we'd better let them to focus on American market including
18 North, Middle and South American market, which are very large
19 market and if they do well, they will have enough sales and
20 earn enough.

21 "Waiting for your news/call.

22 "b.rgs.

23 "Kevin."

24 Q. And was a list attached to this email?

25 A. I'm sorry?

1 Q. Was a list of medicines as part of this email?

2 A. Yes.

3 Q. Okay. Looking at this page, is that the list that was
4 attached?

5 A. Yes, it was.

6 Q. First of all, read the very first caption here.

7 A. "Branded Medicines List."

8 Q. And for the record, read what they are and what the
9 milligrams are.

10 A. Aricept, 5 milligrams, ten milligrams; Cialis,
11 20 milligrams; Casodex, 50 Milligrams; Cadcudtz; Cytotec,
12 200 mcg -- I don't know what that would be; Gliciazide;
13 Levitra, 20 milligrams; Plavix, 75 milligrams; Propecia,
14 1 milligram; Tamiflu, 75 milligrams; Viagra, 100 milligrams,
15 four tabs pack and 100 milligrams in 30 tabs bottle; Zyprexa,
16 5 milligrams and 10 milligrams; Taxotere; Arimidex,
17 1 milligram; Ezetrol, 10 milligrams; Singulair, 5 milligrams
18 and 10 milligrams; Valium; Cellcept; Sutent; Prozac; Tahor;
19 Aprovel; Co-Diovan; Cozaar; and Micardis.

20 Q. All right. If we can go to the very first part, the
21 bottom of the very first page. And is this the mail that you
22 sent to Mr. Xu -- first, what's the date of this?

23 A. That's July 12th, 2007.

24 Q. All right. And would you read what -- what's the
25 subject, if you can tell us what that is?

1 A. Looking forward to US visit.

2 Q. And can you read the email for us, please.

3 A. "Hello Kevin:

4 "I have received your itinerary for your visit. I
5 have taken care of your hotel accommodations and will pick you
6 up at the airport. My business partner has been very busy on
7 our venture when I was out of the country and has made some
8 very large deals starting in August, especially for Aricept.
9 I think you will be pleased with the result. He looks forward
10 to meeting you.

11 "What phone number and time should I call you at so
12 we can talk? Are there any other new products we may be
13 interested in? I look forward to hearing from you.

14 "Best regards

15 "Ed."

16 Q. All right. And then looking at Government's Exhibit
17 No. 40, what is the date of this email?

18 A. This email is July 13th, 2007.

19 Q. Who bought up the Gleevec, the drug Gleevec?

20 A. I believe he did. I don't recall -- I don't even
21 remember my doing it if it was before this point.

22 Q. And can you -- who's sending the email?

23 A. This is from kevinxl07 to Tri State.

24 Q. And could you please read the contents of the email for
25 me, please.

1 A. "Dear Ed,

2 "Further to my email yesterday, please find more
3 information for Gleevec as belows:

4 "1)100mg x 60tabs/pack, USD750/pack.

5 "2)400mg x 30tabs/pack, USD1100/pack.

6 "Attached please find photo for above.

7 "b.rgs.

8 "Kevin."

9 Q. And then below that are photos of packaging?

10 A. Yes.

11 Q. All right. Did you order any Gleevec from Mr. Xu?

12 A. No, we did not.

13 MR. LOUIS: Let's go to Government's Exhibit No. 41.

14 BY MR. LOUIS:

15 Q. And who's singing this email?

16 A. This is from kevinxl07.

17 Q. All right. What's the subject of this email?

18 A. Diamond business.

19 Q. And is Mr. Xu providing some information as far as
20 flights?

21 A. Yes, sir, this was his itinerary for him and his wife.

22 Q. Without reading the actual flight numbers, can you read
23 the information below that, please.

24 A. "Thanks for your kind attention, this time, we only want
25 to check if price of diamond in USA is workable, some of

1 business friends told my wife, the price of diamond in USA is
2 cheap, but we don't know exactly, so we want to see in NYC,
3 Heard a big diamond market there."

4 Q. Who brought up all -- who brought up the issue about
5 finding a diamond?

6 A. It was either him or his wife. I don't recall
7 specifically.

8 MR. LOUIS: Let's go to Government's Exhibit No. 42.

9 BY MR. LOUIS:

10 Q. What is the date of this email?

11 A. July 22nd, 2007.

12 Q. Who's sending the email?

13 A. That is from kevinxl07.

14 Q. When you say kevinxl, is that Mr. Xu?

15 A. Mr. Xu, yes.

16 Q. All right. What is the subject of this email?

17 A. "Re: Liptor."

18 Q. And can you read the email content for us, please.

19 A. "Dear Ed,

20 "Further to our talking last Friday, now we send you
21 our photos of Liptor for your reference, which is produce
22 specially for our South Asian clients.

23 "Also we give you price as your file:

24 "USD45/box, 10mg/tab, 30tabs/boxes.

25 "USD55/box, 20mg/tab, 30tabs/boxes.

1 "Waiting for your soonest reply.

2 "b.rgs.

3 "Kevin."

4 Q. And did he also send pictures?

5 A. Yes, he did.

6 Q. Is that the 10 milligrams?

7 A. That's the picture he sent me of 10 milligrams.

8 Q. Who is the manufacturer of Lipitor?

9 A. The manufacturer of Lipitor is Pfizer.

10 Q. Do you know what Lipitor is generally prescribed for?

11 A. Cholesterol, I believe.

12 Q. Look at the next photo. Is this for the 20 milligram

13 Lipitor?

14 A. Yes, sir.

15 Q. Now, did there come a time when there was an agreement as

16 to the date in time Mr. Xu would actually arrive in the United

17 States to meet with you?

18 A. Yes, that's correct.

19 MR. LOUIS: At this time, Your Honor, we would like

20 to approach the bench for a minute.

21 THE COURT: All right.

22 (A bench conference was held outside the presence of

23 the jury.)

24 MR. LOUIS: I've talked to Mr. Xu's counsel about

25 taking some witnesses out of turn. We have two witnesses that

1 have flew in from France and have flights to get out tomorrow
2 and I wonder if we can very quickly take them.

3 THE COURT: Do you want to stop right now and do it?

4 MR. AMANN: I have no objection at all, Judge.

5 THE COURT: All right.

6 (Bench conference concluded.)

7 THE COURT: Ladies and gentlemen, for scheduling
8 purposes we're going to give Mr. Sherman a break and take two
9 witnesses out of order who, for travel reasons, need to
10 testimony this afternoon.

11 So you may return to your seat.

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: Call your next witness.

14 MR. LOUIS: The Government will call Alec Hern to the
15 stand.

16 THE COURT: Please come right around here and be
17 sworn as a witness.

18 ALEC HERN

19 having been first duly sworn, testified as follows:

20 THE COURT: Be seated please.

21 DIRECT EXAMINATION

22 BY MR. LOUIS:

23 Q. Please state your name for the benefit of the ladies and
24 gentlemen of the jury.

25 A. My name is Alec Hern.

1 Q. And where do you live, Mr. Hern?

2 A. I live in the United Kingdom in England.

3 THE COURT: Pull your microphone to you, a little
4 bit, please.

5 THE WITNESS: No problem. Is that better?

6 BY MR. LOUIS:

7 Q. Yes. And are you employed, sir?

8 A. I work for Sanofi aventis.

9 Q. And what kind of company is Sanofi aventis?

10 A. They manufacturer pharmaceuticals for export.

11 Q. And how long have you been worked for Sanofi aventis?

12 A. About 15 years.

13 Q. And what is your position or role with Sanofi aventis?

14 A. I work as a quality manager. So that means effectively
15 I've got a team working under me who review batch records and
16 the manufacturing and packaging of the products we
17 manufacture.

18 Q. All right. You're speaking a little fast.

19 A. Right.

20 Q. And the court reporter would like it if you slow down a
21 little bit.

22 A. Okay.

23 Q. And how long have you been the manager in -- say that
24 again -- quality --

25 A. Quality manager.

1 Q. Quality manager. How long have you held that position?

2 A. I started in February of 2006 so about two years.

3 Q. Can you give the ladies and gentlemen of the jury the
4 benefit of your educational background?

5 A. Yes, sure. I graduated in chemistry in 1989. I started
6 with Sanofi aventis shortly after that. Worked in regulatory
7 affairs, progressed through to management in 2001. Worked as
8 a manager in regulatory affairs for about five years and then
9 moved as a quality manager after that.

10 THE COURT: Worked as a what?

11 THE WITNESS: As a quality manager after that.

12 THE COURT: Thank you.

13 BY MR. LOUIS:

14 Q. Have you had the occasion as a chemist to conduct
15 analysis of certain samples to determine whether or not they
16 are authentic or counterfeit?

17 A. Yeah. My knowledge is with really the packaging, but we
18 did do some analysis.

19 Q. But as a whole, not so much with this case, but as a
20 whole, have you done that?

21 A. Yes, that's right. And we've got a small group on the
22 side that deal with any kind of a product we have, suspected
23 counterfeit products.

24 Q. And where is your office -- where is that component
25 located, is it in London or is it --

1 A. It's in Newcastle upon Tyne, which is in the northeast of
2 England.

3 Q. Newcastle --

4 A. Newcastle upon Tyne.

5 Q. Is there anyway to spell that for us?

6 A. Yes, sure. It's N-e-w-c-a-s-t-l-e, that's Newcastle,
7 upon, u-p-o-n, and Tyne, Tyne, that's a river.

8 Q. All right. Have you had the occasion to do that on
9 numerous occasions, conduct analysis of samples to determine
10 if they are authentic or counterfeit?

11 A. Yeah, we started getting samples during 2006. In 2007 we
12 analyzed, maybe, about 20 possible counterfeit samples.

13 Q. And did you have occasion to do that in reference to this
14 case?

15 A. I did, yes.

16 Q. Okay. I'm going to hand you what's marked as
17 Government's Exhibit No. 51 -- Government's Exhibit No. 51 --
18 and ask you to take a look at those. First of all, those two
19 packages and the one that has a sticker, Government's
20 Exhibit 51, does it have anything contained in it that you're
21 familiar with?

22 A. Yes, I am, analysis.

23 Q. Yes.

24 A. Yeah, that's -- I analyzed this part.

25 Q. All right. And then looking at the second part of this

1 exhibit, can you look at that and indicate whether or not you
2 received -- I'm going to hand you another part -- I'm going to
3 hand you a bag that has a CI016, has the number PLUS002. Now,
4 you indicated the bag that you just opened you looked -- did
5 an examination of that; is that right?

6 A. That's right.

7 Q. And was that of the packaging or the contents of the
8 packaging?

9 A. That's the packaging.

10 Q. All right. And looking at the packaging, did you find
11 anything that was of significance in making a determination as
12 to whether it was authentic or counterfeit?

13 A. Yeah, there was a number of --

14 MR. LOUIS: At this time I move for the admission of
15 Government's Exhibit No. 51.

16 MR. AMANN: May I examine it very briefly, Judge?

17 THE COURT: Yes.

18 MR. AMANN: May I ask a couple of questions, Your
19 Honor?

20 THE COURT: Yes.

21 MR. AMANN: Mr. Herd?

22 THE WITNESS: Hern.

23 MR. AMANN: Hern?

24 THE WITNESS: Yeah.

25 MR. AMANN: H-e-r-n?

1 THE WITNESS: That's right.

2 MR. AMANN: Did you place your initials somewhere on
3 these to indicate that you were the one that did the
4 examination and so forth?

5 THE WITNESS: Yes, on the bag.

6 MR. AMANN: Okay. So that the front of this bag
7 contains the entire chain of custody of who had what when and
8 so forth and so on; right?

9 THE WITNESS: That's right.

10 MR. AMANN: And the same with -- that's Government's
11 Exhibit 51 -- does the same hold true for this 52 as well?

12 THE WITNESS: I haven't received this pack. I
13 received this carton.

14 MR. AMANN: Okay. So I do not object to Government's
15 No. 51, Your Honor.

16 THE COURT: All right. It is admitted.

17 BY MR. LOUIS:

18 Q. In looking at -- just so we'll know, you received two
19 separate samples to examine; is that correct?

20 A. That's correct. Our receiving the first sample,
21 Exhibit 51, back in May of 2007.

22 Q. And, of course, they're both marked with Exhibit 51.

23 A. Okay. Right. This one here.

24 MR. LOUIS: Are you objecting to this one?

25 MR. AMANN: If you want to mark it separately.

1 MR. LOUIS: Yes, I'll mark it separately. I'll mark
2 that as Government's Exhibit 64.

3 THE COURT: 64?

4 MR. LOUIS: It's part of -- he said he's objecting to
5 this portion of it and I'm going to introduce it at a
6 different time so I -- to keep the record clear, I marked it
7 as another --

8 THE COURT: Okay.

9 MR. AMANN: You could put an "A" on it.

10 THE COURT: He's already got a 51-A.

11 MR. LOUIS: Well, let's do 51-B.

12 THE COURT: Okay.

13 MR. AMANN: That's fine. Maintain the chain. Thank
14 you.

15 BY MR. LOUIS:

16 Q. Looking at Government's Exhibit No. 51, in doing a visual
17 inspection of the carton, did you find anything that was of
18 significance to you?

19 A. Yeah, the lot number, the coating. And every time you
20 pack a batch, we give it a unique batch number. And the batch
21 number of this carton -- I should say, it's not the same as
22 the retained sample, which proves to me it's actually
23 counterfeit.

24 THE COURT: It's what? I couldn't hear what you
25 said.

1 THE WITNESS: The lot number, which is unique to our
2 pack, it's different than the retained sample. Every time we
3 pack a batch, we keep a retained sample and that's what I
4 provide the comparison with so I compare the retained sample
5 against the survey sample.

6 BY MR. LOUIS:

7 Q. Did you actually bring the reference sample with you,
8 sir?

9 A. I did, yes. This is the reference sample that we hold on
10 site.

11 Q. All right. Looking at the sample that was submitted for
12 analysis and then the reference sample, can you point me to
13 what you were referring to. I think you were referring to the
14 lot number.

15 A. That's right, the lot number which is on the front there
16 where it says lot.

17 Q. All right. Looking at that and then the lot number
18 that's on the reference sample, can you actually see the lot
19 number on the reference sample?

20 A. You can see the lot number on the reference sample, just
21 there. The lot number on the sample I was supplied with was a
22 lot larger and not as deeply embossed.

23 Q. Okay. Now, I'll turn it sideways and I'm going to zoom
24 out a little bit. Did you find anything significant with
25 respect to the font?

1 A. Yes. If you look at the word "France" on both samples,
2 you can see the font type is different on the retained sample
3 compared to the sample I was supplied with.

4 Q. This is your reference sample; right?

5 A. That's right.

6 Q. Then this is the sample that was submitted for analysis?

7 A. That's correct.

8 Q. Anything else? The lot number and then the font.

9 Anything else that stood out?

10 A. The words in the red box there which are in French.

11 They're in bolder mass on the retained pack.

12 Q. This language here?

13 A. Yeah, in the red box. I don't know you can see them or
14 not. Yes.

15 Q. Okay. Now -- okay. And what was of significance with
16 respect to that?

17 A. The -- on our retained sample the words are in bold
18 compared to the sample I was supplied with. And also the word
19 "list" is outlined on the sample I was supplied with compared
20 to the reference sample.

21 Q. This is in your sample?

22 A. Yeah.

23 Q. All right. Then this is the --

24 A. See, you can see the characters are outlined.

25 Q. Anything else?

1 A. I don't recall.

2 Q. Now, in looking at what I'm going to mark as -- this is
3 going to be part of Government's Exhibit 51. Did you do an
4 analysis of this carton?

5 A. Yes, I did.

6 Q. And what date was that submitted for analysis?

7 A. That was sent to me in September 2007.

8 Q. And did you find the same -- was the same lot number on
9 that package?

10 A. Sir, it was the same lot number as this sample I was
11 supplied with previously.

12 Q. And then just quickly, did that have the same?

13 A. Yes, both the same characteristics as the sample we just
14 looked at. So, again, the word "list" is outlined and the
15 words in the red box there are non-bold.

16 Q. And what about the wording of France?

17 A. And France is, oh, yeah, that's identical.

18 Q. And let's see if we can make out what this lot number is.

19 No. All right. And after conducting your analysis of the
20 packaging of Government's Exhibit No. 51, did you -- the
21 contents of the box, did you submit that to another component
22 of your laboratory for analysis?

23 A. Yes. I phoned QC analysis. They did perform an
24 analysis, yes.

25 MR. LOUIS: Pass the witness.

1 THE COURT: All right.

2 MR. AMANN: May I proceed, Your Honor?

3 Thank you.

4 CROSS-EXAMINATION

5 BY MR. AMANN:

6 Q. Mr. Hern, good afternoon. My name is Colin Amann. I'm
7 one of the lawyers representing Mr. Xu over there. You've
8 never met Mr. Xu before, have you?

9 A. No.

10 Q. As a matter of fact, we have not met, have we?

11 A. No.

12 Q. Now, what pharmaceutical company do you work for?

13 A. Sanofi aventis.

14 Q. What drugs do they make?

15 A. They make inside the tablets. We make a variety of
16 tablets, Plavix, we make Xatral, lots of tablets.

17 Q. All right. And did you prepare any reports that
18 memorialize the analysis that you did in this case?

19 A. Yes.

20 Q. Do you have that with you?

21 A. Yes.

22 Q. May I retrieve that please?

23 Thank you. Now, with respect to -- if I just call
24 the company aventis, is that acceptable?

25 A. Yes, that's fine.

1 Q. All right. Now, with respect to the Plavix, about how
2 many, if you know, about how many pills of Plavix does aventis
3 produce on any given year, do you know?

4 A. We make two-and-a-half-million tablets in one batch. I'm
5 not sure of the total number.

6 Q. So you would have two-and-a-half-million pills
7 manufactured in one batch. Now, on that particular batch, is
8 that batch going to have the same number? When you run a
9 batch, does it have the same number?

10 A. It has the same batch number, yes, that's right.

11 Q. So you've got in, let's say, a given year, you've got 2
12 million plus pills that have the same batch number; correct?

13 A. That's right, yeah. An intermediate batch -- a batch of
14 tablets can get packed into different lot numbers. So the lot
15 number on the carton is unique to that batch.

16 THE COURT: How many lots are there in a batch?

17 THE WITNESS: It depends. It can be just one. It
18 can be packed in one lot or packed in two or more.

19 THE COURT: What determines how many lots a batch is
20 packed in?

21 THE WITNESS: Customer requirements. If a customer
22 wants -- depends on how much they actually want. If you've
23 got two-and-a-half-million tablets, you can pack a certain
24 number to a carton, a number of packs. If the market wants
25 all the packs, then we just pack them as one lot.

1 THE COURT: So each lot is initially sold to one
2 customer?

3 THE WITNESS: It can be. I mean, if it's packed for
4 France and send all of that to France of that lot.

5 THE COURT: All right.

6 MR. AMANN: Thank you, Your Honor. And those were
7 the questions I was going to ask.

8 BY MR. AMANN:

9 Q. So the lot number and the batch number could be the same
10 hypothetically for 2 million plus pills on a given batch run;
11 is that correct?

12 A. That's correct, yes.

13 Q. Now, are you -- does -- let me ask you this: Does the
14 marketing of Plavix, just using that drug, by aventis reach
15 beyond the bounds of just France?

16 A. Yes.

17 Q. Do you also manu -- well, you tell me. In what countries
18 is that product marketed and sold, if you know?

19 A. In terms of where we market?

20 Q. Yes, sir.

21 A. I'm not sure if the whole market -- what markets we
22 supply forward. We certainly supply the UK, France, and I'm
23 not sure, I will not say.

24 Q. If I talk to you about the EU, do you know what the EU
25 is?

1 A. Yes, I do.

2 Q. What is that?

3 A. European Union.

4 Q. European Union. And if you know, sir, are you familiar
5 with the term "parallel importing"?

6 A. I am, yeah.

7 Q. All right. And isn't it true that -- well, can you tell
8 us briefly who is the EU, the European Union? Can you tell
9 us, if you know, who is in the European Union?

10 A. The -- is that all 13 countries in Europe which are part
11 of the European Union?

12 Q. And I think it was, and you correct me if I'm wrong,
13 sometime back in the early '90s there was a treaty entered
14 that basically allowed everybody who was a member of the EU to
15 transfer freely amongst themselves; is that true?

16 A. That's right, yeah, free trade.

17 Q. All right. So basically the EU got together and said,
18 "We're going to take down our trade borders and allow product
19 to be imported and exported between the various and sundry
20 countries"; right?

21 A. That's correct.

22 Q. And parallel importers are the people that actually --
23 they're different from the manufacturer, right, parallel
24 importers?

25 A. Yes.

1 Q. They're private businesses; correct?

2 A. Yes, I believe so.

3 Q. And what they do is they facilitate the trade of, let's
4 say, Plavix for example, between the UK, France, Italy, Rome,
5 all the various countries in the European Union; right?

6 A. That's right, sir.

7 Q. The idea behind the treaty was to take down all of the
8 artificial borders that exists between countries so that free
9 trade could exist and, therefore, based on the free trade, the
10 prices of products would become more competitive and less;
11 right?

12 A. That's correct, sir.

13 Q. For example, in the UK you have social security like many
14 other countries in the EU.

15 A. Yes, that's correct.

16 Q. And the idea behind the treaty was, if we allow the free
17 trade of pharmaceuticals, the customer's going to have to pay
18 less for the product; right?

19 A. Yes.

20 Q. Because you have various businesses competing?

21 A. That's correct, yes.

22 Q. And also, it would reduce healthcare costs in terms of
23 what social security and so forth would have to spend?

24 A. That is correct, sir.

25 Q. Okay. Now --

1 THE COURT: I have a question. Do you know where the
2 aventis manufacturing plants are located?

3 THE WITNESS: The aventis manufacturing plants,
4 that's Sanofi aventis.

5 THE COURT: Okay. Where are they located?

6 THE WITNESS: Is this for the manufacture of products
7 alone?

8 THE COURT: Yes.

9 THE WITNESS: We have the Newcastle site, we have two
10 sites in France, in Ambares and Quetigny and there is one in
11 Humacao as well.

12 THE COURT: One where?

13 THE WITNESS: Humacao. I think it's in Puerto Rico
14 which manufacturers solely for the States.

15 THE COURT: All right. So those four plants are all
16 there are?

17 THE WITNESS: Yes.

18 THE COURT: Thank you.

19 BY MR. AMANN:

20 Q. Mr. Hern, with respect to your analysis of these various
21 and sundry products, how long have you been trained in
22 recognizing these differences between the various packaging?

23 A. Well, you don't need training, to be fair. Visually you
24 can see the difference between the font size of these two
25 cartons.

1 Q. Now, if, for example, you didn't have one carton to
2 compare to another, it would, by all accounts, appear to be
3 the real McCoy; right?

4 A. That's correct.

5 Q. And so it's only through comparison that you can tell the
6 difference?

7 A. With a genuine sample, yes.

8 Q. And you have been trained to recognize what I think we
9 can fairly describe as subtle differences?

10 A. Yes, I can tell the difference between two font types.

11 Q. Now, with respect to the actual pills themselves, these
12 come -- now, a lot of these are missing out of here. Is that
13 the way it came to you?

14 A. Certain over time would have been taken for analysis.

15 Q. Okay. These are called blister packs?

16 A. That is correct.

17 Q. And the only way you can figure out if the pill is a real
18 pill or a fake pill is to actually put it into or subject it
19 to chemical analysis; right?

20 A. No, because we take a retained sample. So we have -- for
21 every component that we have for a pack is given a unique
22 number for us.

23 Q. Right.

24 A. So we can compare against the reference again. So we
25 have references. So we retain samples for each of the

1 components of this pack.

2 Q. It relates back to the batch number and the lot number?

3 A. That relates back to the -- this version. So we have a
4 retained sample for this, if you use a carton, for example.

5 Q. All right. Now, does the packaging -- this may sound
6 like a stupid question -- packaging differs from country to
7 country, doesn't it?

8 A. It does, yeah, yeah.

9 Q. You expect the French people to be able to understand
10 what it is in French and the English to understand what it is
11 in English and Italian and so forth?

12 A. Yes.

13 MR. AMANN: May I have just a moment, Your Honor?

14 THE COURT: Yes.

15 MR. AMANN: Pass the witness.

16 THE COURT: Anything else, Mr. Louis?

17 MR. LOUIS: No, Your Honor.

18 THE COURT: Thank you, sir. You're excused.

19 The Government may --

20 Did you have something else?

21 MR. AMANN: I was just going to return these
22 documents to the witness, Your Honor.

23 THE COURT: All right. Do you need your copies of
24 those items back, the samples you gave the Government?

25 THE WITNESS: I got every retained sample here.

1 MR. LOUIS: I gave it back to him, Your Honor.

2 THE COURT: All right. Thank you.

3 You're excused.

4 You may call your next witness, Mr. Louis.

5 MR. LOUIS: The Government calls Mr. Alain Duguet.

6 THE COURT: Please come around, sir, and be sworn as
7 a witness. Good afternoon. Would you raise your right hand.

8 ALAIN DUGUET

9 having been first duly sworn, testified as follows:

10 THE COURT: Mr. Louis, you may proceed.

11 MR. LOUIS: Thank you, Your Honor.

12 DIRECT EXAMINATION

13 BY MR. LOUIS:

14 Q. Please state your name and spell your last name for the
15 benefit of the jury and the court reporter.

16 A. Alain Duguet, D-u-g-u-e-t.

17 Q. And where do you live, Mr. -- is it Duguet?

18 A. Duguet is right. I live in Paris, France.

19 Q. And how are you employed, sir?

20 A. I'm employed by Sanofi aventis Company.

21 THE COURT: Could you pull the microphone to you so
22 we can hear you a little bit better. The microphone will
23 move. Thank you.

24 BY MR. LOUIS:

25 Q. Is Sanofi aventis a pharmaceutical company?

1 A. It is a pharmaceutical company, yes.

2 Q. And what is the nature of your employment with Sanofi
3 aventis?

4 A. I'm working as analytical coordinator for analytical
5 activity within the company.

6 Q. Okay. Analytical activity in the company. Does that
7 analytical activity have to do with doing analysis of samples
8 that are submitted for analysis?

9 A. That's right.

10 Q. Give the ladies and gentlemen of the jury the benefit of
11 your educational background.

12 A. I had gone pharmacy, third year pharmacy and I did a
13 Ph.D. in analytical chemistry afterwards.

14 Q. So does that mean that you have expertise in the field of
15 chemistry?

16 A. So I've been working for 25 years in this field so I have
17 some kind of expertise I would say, yes.

18 Q. Okay. And to make sure, you said you have a Ph.D.; is
19 that right?

20 A. I have a Ph.D., that's right.

21 Q. In analytical chemistry?

22 A. Analytical chemistry, yes.

23 Q. All right. As a person whose had experience, have you
24 had the occasion to do an analysis of certain samples that
25 have been submitted to Sanofi aventis for analysis to

1 determine whether it is counterfeit or authentic?

2 A. It is something we did several times, yes.

3 Q. I'm sorry?

4 A. We did several times this type of analysis.

5 Q. Okay. But have you done that before on other occasions?

6 A. Yes, on other occasions before that, that's true.

7 Q. And you indicated that you did an analysis in reference
8 to this case, samples that were submitted to Sanofi aventis;
9 is that right?

10 A. That's right, yes.

11 Q. And did you do a report of your findings of your
12 analysis?

13 A. We did a report of the findings.

14 Q. All right. And looking at your report, which I think you
15 have labeled PLUS002, which sample before you did you do
16 analysis that refers to the report 002?

17 First of all, do you have -- are the exhibits that
18 you conducted the analysis on, are they before you on the
19 witness stand?

20 A. These are the samples that we had, yes.

21 Q. Okay. Looking at the very first one, is there a blister
22 strip pack in front of you?

23 A. Yes.

24 Q. I think that's part of Government's Exhibit No. 51. Tell
25 the ladies and gentlemen of the jury, once you received the

1 pack for analysis, what's the first type of test that you
2 performed?

3 A. So the first thing, we take the pill out of the blister
4 and we look at the visual appearance, compare it with what is
5 the normal appearance of other product. And then we conduct a
6 thorough chemical analysis.

7 Q. Okay. Now, when you do the visual appearance inspection,
8 was there anything significant with respect to the appearance
9 of a suspect sample and your reference sample?

10 A. So the sample looked quite alike with normal -- our own
11 gaze.

12 Q. So the appearance looked the same?

13 A. Yes.

14 Q. Now, the chemical analysis, what's the first chemical
15 analysis test that you performed?

16 A. The first chemical analysis that we classically do on
17 this type of compound is to prove the identity of the drug
18 substance that is inside. So we have to do to see if it
19 varies any, the drug substance inside or not. And this is the
20 first identity analysis that we perform.

21 Q. I'm sorry, I didn't ask you, what is the type -- what is
22 the pharmaceutical appeal that you analyzed, is it Plavix?

23 A. I analyzed what was presented as a Plavix.

24 Q. Okay. And the first analysis that you did, what's the
25 name of the chemical?

1 A. Just chemical analysis is called NMR for nuclear magnetic
2 resonance.

3 Q. And what does the particular test tell you when you --
4 after you do the test?

5 A. It tells us if it's the right drug which is inside the
6 pill or not.

7 Q. And that drug that you're referring to would be the API,
8 the active pharmaceutical ingredient?

9 A. Yes.

10 Q. And what is the active pharmaceutical ingredient in
11 Plavix?

12 A. It is called clopidogrel bisulfate, which is a certain
13 form of salt of clopidogrel, which is our normal Plavix.

14 Q. I'll say it, but I'll probably --

15 THE COURT: Why don't you spell it, please, sir.

16 A. Clopidogrel, c-l-o-p-i-d-o-g-r-e-l.

17 THE COURT: Thank you.

18 BY MR. LOUIS:

19 Q. Did you find the API, the active pharmaceutical
20 ingredient in the suspect sample?

21 A. So we found the active ingredient but not in the same
22 form as the one we usually had in our compound.

23 Q. And what does that mean, the same form? Is it of a
24 different quantity or different type?

25 A. It's complex to explain, but clopidogrel is the active

1 ingredient, but it is shaded with what is called a
2 counter-item, in our case it was a salt; in this case there
3 was no counter-item. And this counter-item can have an impact
4 on the way the API is absorbed.

5 Q. And so that's something that you need to -- Sanofi
6 aventis manufacturing requirements?

7 A. Yes.

8 Q. After making that determination that it's not the same
9 API as Sanofi uses, what's the next type of test that you did?

10 A. So the next type of testing was the remaining -- the
11 contents of this -- the API in the tablets.

12 Q. Okay. And so you're looking now for the percentage of
13 the API that's contained within the pill?

14 A. That's right.

15 Q. And when you did that test, what percentage of the API
16 was present?

17 A. So normally for Plavix is dosed as 75 milligrams of
18 clopidogrel. And in this case we found around 7 milligrams of
19 clopidogrel. It is the same -- it is to say approximately 10
20 percent only of the expected dose.

21 Q. 10 percent of 75 milligrams was present?

22 A. Approximately, yes.

23 Q. So that would be -- would that be considered subpotent?

24 A. Well, you can very easily better -- with 90 percent of
25 the active missing of the potency of a drug is much, much

1 lower than what would be expected.

2 Q. Do you know what Plavix is typically prescribed for?

3 A. Plavix is an anti-platelet ingredient; it is to say that
4 it's for -- avoid stroke or this kind of a ischemic attack so
5 it's a serious disease.

6 Q. All right. And, in addition, did you perform a test to
7 determine if there were any impurities present?

8 A. So the other test that we currently -- that we usually do
9 on this type of material is test the impurities content. In
10 this case we found as much as 10 percent impurities beside the
11 API.

12 Q. And what is the allowed amount of impurities?

13 A. So the allowed amount, which is describing our dose here,
14 but also in the US is 2.5 percent.

15 Q. So it's much higher than what's allowed.

16 A. It's four times higher than the maximum allowed
17 currently.

18 Q. All right. And then did you also perform a test on the
19 sample that I'm going to mark as Government's Exhibit 51-B?
20 Look at Government's Exhibit 51-B. Did you also do a testing
21 of that sample yourself?

22 A. So then we tested a second sample of so-called Plavix,
23 yes.

24 Q. Okay. And did you prepare a report of your test of that
25 sample?

1 A. And we wrote a report regarding that on the second sample
2 as well.

3 Q. And is that contained in the report which is labeled
4 PLUS003?

5 A. That is our report, yes, PLUS003, yes.

6 Q. And did you do -- with respect to that sample again, did
7 you also do the analysis, first of all, to determine whether
8 the API was present?

9 A. We did the same kind of analysis. So first we did an
10 analysis if it was present or not.

11 Q. And do you recall what percentage of API was present in
12 that sample?

13 A. So in the previous case we have found the content of
14 the -- around 10 percent of the expected dose.

15 Q. All right. Then did you also do a test to determine what
16 the amount of the API was -- I'm sorry. Did you do a test for
17 impurities?

18 A. Yes, sir, we did the same test as in the first sample
19 regarding impurities. And in this case we found as much as
20 20 percent impurities so that's the higher level than in the
21 first sample.

22 Q. I'm going to hand you what's marked as Government's
23 Exhibit No. 51-A and first page of Government's Exhibit 51-A,
24 is that an excerpt of the report that you did?

25 A. This is an excerpt of the report that I did, yes.

1 Q. It's taken from that report?

2 A. Yes, it is, it's straight off the report.

3 Q. And then the second page of that exhibit, is that also an
4 excerpt of -- I think it's -- first one is PL002 and the
5 second one is PL003, the second report; is that right?

6 A. That one was PL -- the first page is PLUS3 and the second
7 one is PLUS2.

8 Q. Okay. I got it. So the first one is report of PL003 and
9 the second one is PL002?

10 A. That's right.

11 MR. LOUIS: At this time I move for the admission of
12 Government's Exhibit No. 51-B and 51-A.

13 THE COURT: What is 51-A? It's not on your list.

14 MR. LOUIS: It's an excerpt of his -- the report of
15 analysis.

16 MR. AMANN: Judge, I have no objection to
17 Government's 51-A or 51-B.

18 THE COURT: You have no objections?

19 MR. AMANN: No, sir.

20 THE COURT: They're both admitted.

21 You may proceed.

22 MR. LOUIS: Thank you.

23 BY MR. LOUIS:

24 Q. Now, when you talked about the impurities that were
25 present, these impurities are different from the impurities

1 that you would find and that's allowable in an authentic
2 sample?

3 A. Most of the impurities that we found in this sample were
4 not ones that were -- that may be present in the normal
5 samples. So they were a known and not present in the known
6 sample.

7 Q. So there were unknown impurities. You don't know what
8 that is?

9 A. No, we don't know what they are.

10 MR. LOUIS: Pass the witness.

11 THE COURT: You may proceed.

12 MR. AMANN: Thank you, Judge.

13 CROSS-EXAMINATION

14 BY MR. AMANN:

15 Q. Mr. Duguet, good afternoon. My name is Colin Amann. I'm
16 one of the lawyers representing Mr. Xu.

17 In the report that is now in evidence as Government's
18 51-A it says it's Page 6 of 11. Do you have your entire
19 report with you, sir?

20 Thank you very much. May I borrow this for a minute
21 and I promise to get it back to you.

22 Thank you. This is the report that you made based on
23 your examination in this case; right?

24 A. That's right.

25 Q. And this is your complete report?

1 A. That's right.

2 Q. Thank you. Now, looking at Government's Exhibit 51-A,
3 sir, on the back portion of it --

4 MR. AMANN: If I may approach.

5 BY MR. AMANN:

6 Q. -- it says here, sir, that you're doing the comparison
7 between your real Plavix versus one that's suspect to be a
8 fake Plavix; correct?

9 A. That's correct.

10 Q. Okay. And with respect to what you're using is your real
11 Plavix, am I reading this correctly, sir, that you are
12 comparing it to a Plavix from a batch that was manufactured in
13 1969?

14 A. No, it's the number of the batch.

15 Q. It's the number of the batch.

16 A. It's not the date or year of the batch.

17 Q. Okay. I just wanted to make sure, sir. So that's the
18 number of the batch itself.

19 Now, you also examined the actual pills themselves,
20 sir, between the one that was submitted to you as suspect and
21 one that was -- that you knew to be real; correct?

22 A. That is correct.

23 Q. Do you have one of the real ones with you?

24 A. No, not with me, no.

25 Q. All right. Would you agree with me, sir, that just on

1 course examination, if somebody were just to pick up this pill
2 and look at it, I believe you testified that it looked very
3 much like the real?

4 A. Similar for a non-expert eye.

5 Q. So from a non-expert eye you wouldn't know that it was
6 fake, would you?

7 A. No.

8 Q. You would have to have an expert eye?

9 A. Uh-huh.

10 Q. Was that a yes for the lady here?

11 A. Yes.

12 Q. Thank you. Now, as a chemist I believe you referenced
13 that you conducted a test in this case from a nuclear magnetic
14 resonance machine.

15 A. That's right.

16 Q. And what that machine does is it actually breaks down the
17 molecules of any product and then based on electromagnetic
18 fields it analyses what is what based on where you see spikes
19 on the graph, basically; right?

20 A. You can call it like this, yes.

21 Q. It's very, very simple. That's a very expensive
22 instrument, isn't it?

23 A. Yes.

24 Q. Do you happen to know how much it costs?

25 A. Several hundred thousand euros.

1 Q. Okay. Several hundred thousand euros. Now, do you also
2 use infrared spec -- I can't do that -- IR machine, are you
3 familiar with that?

4 A. We also can use IR machine, but it's less powerful.

5 Q. Is that machine very experience too, sir?

6 A. It's less expensive, I think.

7 Q. Sir, do you have -- and if you know, fine, if you don't
8 know, fine -- do you have any idea how much money aventis
9 invests in all its various and sundry machines in your
10 laboratory?

11 A. On what basis, a year?

12 Q. Per year.

13 MR. LOUIS: Objection to the relevance to that.

14 THE COURT: Overruled.

15 BY MR. AMANN:

16 Q. Just per year.

17 A. I don't see what it will help, but several hundred
18 thousand euros per year in a given lab, yes.

19 Q. Okay. And that is something the lab is set up to do. In
20 order to produce its product, it has to be able to make that
21 kind of investment so that you can, number one, manufacture
22 the product; correct?

23 A. Uh-huh, correct.

24 Q. And, number two, to do quality control of the product;
25 correct?

1 A. Let's say that those very expensive machines on useful
2 classical quality control that you ask me the technical
3 questions, they are used when we need to go more into detail
4 in order to investigate if it's a counterfeit or not, for
5 instance, but it is not typically quality control of the
6 material.

7 Q. And do you know -- and if you do, fine, and if you
8 don't -- about how much money per year aventis invests on
9 quality control for the drug Plavix?

10 A. I'm afraid I can't answer that question.

11 Q. All right. In the hundred thousand euro range?

12 MR. LOUIS: Objection. Calls for speculation. This
13 witness has to particular knowledge of that issue.

14 THE COURT: All right. The objection is sustained.

15 MR. AMANN: Thank you, Judge. I pass the witness.
16 If I may return this report to him.

17 MR. LOUIS: No further questions.

18 THE COURT: Thank you very much, sir. You are
19 excused.

20 All right. Are we back to Mr. Sherman?

21 MR. LOUIS: Yes, Your Honor.

22 THE COURT: You may proceed.

23 MR. LOUIS: Thank you, Your Honor.

24 ROBERT SHERMAN

25 having been previously duly sworn, testified as follows:

1 DIRECT EXAMINATION

2 BY MR. LOUIS:

3 Q. Mr. Sherman, before we took that break you were talking
4 about, with respect to Mr. Xu, setting up a meeting; is that
5 right?

6 A. That is correct.

7 Q. And did that, in fact, take place?

8 A. Yes, it did.

9 Q. Now, where was the meeting going to take place?

10 A. It was going to take place in Houston, Texas.

11 Q. For the moment I can't put my hands on Exhibit 49 -- let
12 me show you what's marked as Exhibit 49 and ask you to take a
13 look at those. What is Government's Exhibit 49?

14 A. 49 are invoices that were recovered from Mr. Xu's
15 computer for Casodex one million forty-nine thousand --

16 Q. Just tell us what drug.

17 A. Casodex and an invoice for Plavix.

18 Q. Okay. And does the Plavix have a lot number on it at
19 all?

20 A. Not that I see.

21 Q. Okay. Thank you.

22 Now, let's talk about the meeting. What was going to
23 be the focus of this meeting with Mr. Xu here in the United
24 States.

25 A. The focus of the meeting was to discuss the going forward

1 with the venture. All the purchases to date that had been
2 conducted and delivered to me here in Houston, Texas were
3 represented as -- on my behalf as samples to provide to my
4 customers. We were now going to do the formal negotiations
5 for commencing a full-fledged business venture where we would
6 deal in large volumes.

7 Q. All right. Let me hand you what's marked as Government's
8 Exhibit 43 and 44. First, Government's Exhibit No. 43, what
9 is that?

10 A. 43 is an undercover meeting with Kevin Xu that took place
11 here in Houston, Texas.

12 Q. And have you had an opportunity -- is that a video or
13 audio?

14 A. I believe that's a video.

15 Q. All right. Have you had an opportunity to look at the
16 video in its entirety of the meeting with Mr. Xu here in
17 Houston, Texas?

18 A. Yes, I have.

19 Q. And have you had occasion -- looking at Government's
20 Exhibit No. 44, what is that?

21 A. I believe that is an audio recording, just audio.

22 Q. All right. Now, who was going to be present at the
23 meeting?

24 A. Mr. Xu and Special Agent Doug Mason of the Food and Drug
25 Administration Office of Criminal Investigation.

1 Q. And what was his role going to be at the meeting?

2 A. He was posing as a US medical doctor who was going to be
3 one of my major customers for Xu's products for introduction
4 of these pharmaceutical products into the American commerce.

5 Q. And what date did Mr. Xu arrive for this meeting?

6 A. July 24th, 2007.

7 MR. LOUIS: All right. At this time I move for the
8 admission of Government's Exhibit No. 43 and 44.

9 MR. AMANN: Judge, I have no objection to No. 43. I
10 don't know if we established what was on 44.

11 MR. LOUIS: 44 is the audio.

12 BY MR. LOUIS:

13 Q. Again, what is 44?

14 A. One is a video and audio, I believe that's 43, together,
15 jointly tracked and the other one is audio only as a backup.

16 Q. So just for the record purposes, Government's Exhibit
17 No. 43 has audio and video?

18 A. I believe that's audio and video.

19 Q. And then Government's Exhibit No. 44?

20 A. I believe that's just the audio.

21 Q. Have you had an opportunity to listen to both --

22 A. Yes, I have.

23 Q. -- Government's Exhibit 43 and 44 before coming to court
24 today?

25 A. I have indeed.

1 Q. All right.

2 MR. AMANN: I have no objection, Your Honor.

3 THE COURT: All right. 43 and 44 are admitted.

4 This might be a good time to take our afternoon
5 recess. We'll stand in recess for 15 minutes until 2:55.

6 (There was a recess taken.)

7 THE COURT: Be seated, please, ladies and gentlemen.

8 Mr. Louis, you may continue.

9 BY MR. LOUIS:

10 Q. I believe before the break we were about to listen to
11 Government's Exhibit 43.

12 (Audio and videotape playing.)

13 THE COURT: What's the problem?

14 MR. LOUIS: The first version was not used and this
15 is starting -- we had a problem finding the one that starts
16 from the beginning. This is the one that starts from the
17 beginning.

18 (Audio and videotape playing.)

19 MR. LOUIS: Can we pause it just for a second?

20 BY MR. LOUIS:

21 Q. The person whose back of the head we see, who is that?

22 A. That's Special Agent Mason.

23 Q. That's Douglas Mason?

24 A. Doug Mason of the FDA.

25 Q. All right.

1 (Audio and videotape playing.)

2 MR. LOUIS: Stop it right there.

3 BY MR. LOUIS:

4 Q. What was Agent Mason showing Mr. Xu?

5 A. If you recall, one of the exhibits was an email from
6 Mr. Xu dated, I believe it was, the 22nd of June 2007 in which
7 a picture of, I believe, Lipitor was sent to me. Special
8 Agent Mason was showing him that email and verifying that it,
9 indeed, came from Mr. Xu.

10 Q. All right.

11 MR. LOUIS: Please.

12 (Audio and videotape playing.)

13 BY MR. LOUIS:

14 Q. Was Mr. Xu indicating that he was doing it in house or
15 out -- sending somebody else?

16 A. No, he was indicating that he created it, he made it.

17 Q. His company?

18 A. His company.

19 (Audio and videotape playing.)

20 Q. Mr. Xu used the term "HPLC." What was he talking about?

21 A. HPLC, he stated that he analyzed the pills they produced
22 using an HPLC. HPLC is a -- some type of sophisticated test
23 equipment, which -- I'm not sure what it stands for, the
24 acronym.

25 Q. But Mr. Xu was indicating he was the one who was going to

1 do the pills and the packaging?

2 A. They would do the pills and packaging and they would test
3 the actual pills with HPLC.

4 Q. All right. If this were legitimate pills, would you need
5 to go through and do your own testing of the pills?

6 A. No, you would not.

7 (Audio and videotape playing.)

8 BY MR. LOUIS:

9 Q. Mr. Xu indicated he had a company that supplied
10 something. What was he talking about?

11 A. Hospitals in China.

12 Q. His company did what?

13 A. They supplied hospitals in China.

14 Q. Which type of drugs?

15 A. A variety of drugs. He also said they manufactured
16 generic drugs.

17 Q. Okay.

18 (Audio and videotape playing.)

19 BY MR. LOUIS:

20 Q. If you are dealing with legitimate product, would you
21 need to put the packaging separate from the pills?

22 A. No, they're always together.

23 (Audio and videotape playing.)

24 BY MR. LOUIS:

25 Q. And was that the conclusion of the meeting with Mr. Xu?

1 A. Yes, it was.

2 Q. All right. And after Mr. Xu was arrested, did he make
3 any statements?

4 A. No, he did not.

5 Q. Let me show you -- during the conversation with Mr. Xu, I
6 think you asked him several times if he had any US customers.
7 Do you recall that?

8 A. Yes, I did.

9 Q. Let me show you what's marked as Government's Exhibit 46
10 and ask you what is Government's Exhibit No. 46.

11 A. That's an Excel spreadsheet that I obtained from Mr. Xu's
12 laptop computer.

13 MR. AMANN: Your Honor, may we approach with this
14 exhibit?

15 THE COURT: Pardon me?

16 MR. AMANN: May we approach with this exhibit?

17 THE COURT: Let me read the exhibit first.

18 All right. Approach the bench.

19 (A bench conference was held off the record.)

20 MR. AMANN: Judge, I didn't want to make a speaking
21 objection. I'm going to object to Government's Exhibit No. 46
22 because it purportedly relates to individuals that are not
23 part of this -- of the allegations in this indictment
24 whatsoever. It clearly is not relevant to the case and it is
25 more of an -- I believe it's evidence of other crimes, wrongs

1 and acts that have nothing to do with this case whatsoever.

2 So I would object to it on those grounds.

3 MR. LOUIS: It clearly shows Mr. Xu had customers in
4 the United States that purchased products of Mr. Xu's through
5 the internet. It's to show Mr. Xu actually did have sales
6 coming out of the United States. It shows he has been
7 involved in selling to the United States and we have one of
8 Mr. Xu's customers.

9 THE COURT: Well, then you don't need this. You have
10 other witnesses. I'm concerned that the prejudice of the
11 document outweighs the relevance. You can cross-examine
12 Mr. Xu about it when he testifies.

13 MR. LOUIS: Okay. Is the Court also precluding using
14 this exhibit with other witnesses?

15 THE COURT: No, I haven't said that at all. I just
16 said you can't use this witness, which I'm not sure -- you
17 can't use this exhibit -- I'm not sure -- there's not an
18 adequate foundation, this is just the fact that you found it
19 on his computer.

20 While you're up here, I'm going to give the jury some
21 instructions about our schedule. What's your best estimate of
22 time and when you'll rest?

23 MR. LOUIS: We have three or four more documents
24 and --

25 THE COURT: I mean, the whole case.

1 MR. LOUIS: We have four or five chemists today, then
2 an investigator from London who will talk about some documents
3 and two females.

4 THE COURT: And then we've got the customer of
5 Mr. Xu. So you think you will conclude tomorrow?

6 MR. LOUIS: Yes.

7 THE COURT: So we're probably looking at coming back
8 Monday with your case.

9 MR. AMANN: Judge, I don't want to go into
10 cross-examination worrying about how long it is and --

11 THE COURT: No, I'm not rushing you. I'll just tell
12 the jury it looks like you'll be here Monday.

13 MR. AMANN: Yes, sir.

14 THE COURT: Thank you.

15 (Bench conference concluded.)

16 BY MR. LOUIS:

17 Q. All right. Let me show you what's marked as Government's
18 Exhibit No. 57 and ask you to take a look at this exhibit.
19 And what is Government's Exhibit 57.

20 A. That's the tabulation of some of the deliveries that we
21 received from Mr. Xu -- the deliveries we received from Mr. Xu
22 and the approximate retail price per tablet and the sales
23 transactional price.

24 Q. All right. So that is the sales price of -- the retail
25 price of the drugs that Mr. Xu provided to you?

1 A. That's correct.

2 Q. Versus the price that you paid Mr. Xu for those drugs?

3 A. That's correct.

4 MR. LOUIS: At this time I move for the admission of
5 Government's Exhibit No. 57.

6 MR. AMANN: And you, sir, created that document, did
7 you?

8 THE WITNESS: I'm sorry?

9 MR. AMANN: Did you create this document?

10 THE WITNESS: One of the agents in my office created
11 it.

12 MR. AMANN: And it just has to do with respect to
13 what we've been talking about the past couple of days with
14 respect to what Mr. Xu sent you and what you paid for those
15 tablets?

16 THE WITNESS: What we paid for them and what the
17 retail price would have been.

18 MR. AMANN: Okay. And where did you obtain that
19 retail price?

20 THE WITNESS: I'm sorry?

21 MR. AMANN: Do you know how that retail price was
22 arrived at?

23 THE WITNESS: An agent called pharmacies to see what
24 they were selling it for. And, in fact, the price could, in
25 fact, be higher than these prices.

1 MR. AMANN: I have no objection, Your Honor.

2 THE COURT: All right. Government's Exhibit 57 is
3 admitted.

4 BY MR. LOUIS:

5 Q. Let's take a look at Government's Exhibit No. 57. Now,
6 the first column is referencing the date of the purchases?

7 A. That's correct -- date of delivery.

8 Q. All right. Says "Date Order Received."

9 A. Yes.

10 Q. And then the name of the drugs?

11 A. Yes, sir.

12 Q. And then the -- it says "Total Tablets."

13 A. Yes, sir.

14 Q. Did you go through and do a count of all the tablets?

15 A. Yes, sir.

16 Q. And then it says "Approximate Retail Price." Did the
17 retail price vary from the wholesale price?

18 A. Wholesale price is less.

19 Q. And just going through the very first one, "Tamiflu,"
20 what's the retail price of a tablet of Tamiflu?

21 A. The prices that we received at the time of making this
22 document was \$10.71.

23 Q. Now, can you tell me where I can look on the chart on the
24 right-hand side scrolling down and what is the price of a
25 tablet of Tamiflu that you paid Mr. Xu?

1 A. Okay.

2 Q. I think it's going to be at the bottom.

3 A. \$2.20.

4 Q. Is that a substantial difference?

5 A. You bet. Very substantial difference.

6 THE COURT: Where is the 2.20?

7 BY MR. LOUIS:

8 Q. Would you please highlight it, if you can, on the chart,
9 2.20.

10 A. Right over there.

11 Q. Then also note on the chart below --

12 A. I'm sorry?

13 MR. LOUIS: Scroll all the way through. Right there.

14 BY MR. LOUIS:

15 Q. So that would reference the two purchases of Tamiflu?

16 A. Yes, that's correct.

17 Q. And then -- now, what is the price of Zyprexa?

18 A. Zyprexa was \$12.62 per tablet.

19 Q. And then what is the price that you paid Mr. Xu for a
20 tablet of Zyprexa?

21 A. \$3.50 per tablet -- correction, \$6 per tablet.

22 Q. All right. Then if we go to the Plavix, how much is the
23 retail value for a pill of Plavix?

24 A. Plavix was approximately \$5 per tablet.

25 Q. And that's for the 10 milligrams?

1 A. Yes, I believe so.

2 MR. LOUIS: Okay. If you go further down and
3 highlight the order 4-13-07. Go up a little bit. Right
4 there.

5 BY MR. LOUIS:

6 Q. And Plavix, what was the price there?

7 A. \$1.36 per tablet we paid.

8 Q. \$5 retail value?

9 A. Yes, that's correct.

10 Q. Then, I believe, then it's Aricept. How much did you pay
11 Mr. Xu -- I mean, what's the retail value of Aricept?

12 A. \$6.42.

13 Q. Then how much did you pay Mr. Xu?

14 A. \$2.70.

15 MR. LOUIS: Then if we can scroll up a little bit.

16 BY MR. LOUIS:

17 Q. How much did you pay Mr. Xu total for those two orders?
18 You've got 5,720 and 5,220.

19 A. That's \$10,940.

20 Q. Versus the retail available for these pills?

21 A. 167,674.

22 Q. Okay. And what information did that tell you when you
23 were purchasing the pills from Mr. Xu?

24 A. That is a significant departure from the regular retail
25 price.

1 MR. LOUIS: Now, may I have a moment, Your Honor?

2 THE COURT: Yes.

3 MR. LOUIS: At this time I pass the witness.

4 THE COURT: All right. You may proceed.

5 MR. AMANN: Thank you, Judge.

6 THE COURT: Are you going to use the computer or the

7 Elmo?

8 MR. AMANN: I probably will be using the Elmo.

9 THE COURT: All right.

10 CROSS-EXAMINATION

11 BY MR. AMANN:

12 Q. Okay. Good afternoon, Agent Sherman. How are you?

13 A. Fine, thank you, sir.

14 Q. All right. Let's go back to the beginning a little bit,
15 if we could. Now, at the meeting in Bangkok that we saw the
16 tape and heard the audio of, that was with you, Kevin Xu and a
17 lady named Sandra?

18 A. That is correct.

19 Q. Okay.

20 A. And Mrs. Xu.

21 Q. And Mrs. Xu. I'm sorry. And who is Sandra?

22 A. She's an investigator working on behalf of Eli Lilly.

23 Q. She's an investigator. And she was conducting an
24 investigation, I take it?

25 A. Prior to this meeting, yes.

1 Q. And how long prior to this meeting had she been
2 conducting an investigation on behalf of Eli Lilly?

3 A. I'm not sure.

4 Q. You're not certain how long?

5 A. No.

6 Q. During -- you had conversations with Sandra, I take it.

7 A. Brief conversations before this meeting.

8 Q. And is Sandra -- where is she from?

9 A. She's from Turkey.

10 Q. Is she fluent in Chinese?

11 A. No, she's not.

12 Q. You don't know how long she was investigating Mr. Xu in
13 general or conducting an investigation into these types of
14 things --

15 A. Neither.

16 Q. -- in general?

17 A. Neither.

18 Q. Now, correct me if I'm wrong, investigators, what they
19 usually do is they prepare reports, don't they?

20 A. That's correct.

21 Q. They gather information in terms of physical evidence;
22 correct?

23 A. Uh-huh.

24 Q. They gather information in terms of tape recordings;
25 correct?

1 A. That is correct.

2 Q. And part of the reason they do that is, number one,
3 they've got to turn it over to somebody for them to look at,
4 don't they?

5 A. That's correct.

6 Q. And another reason they do that is because they have to
7 be able to go back and remind themselves of what all happened;
8 right?

9 A. That's correct.

10 Q. Now, what reports, tape recordings, any kind of physical
11 evidence did you receive from Sandra prior to your meeting in
12 Bangkok?

13 A. I received no reports from Sandra. Also, as far as
14 regarding the use of tape recordings, in some of the countries
15 that they were operating, laws preclude individuals from using
16 tape recordings without Government approval.

17 Q. All right. Well, you were in China -- Bangkok's in
18 China?

19 A. No, it's in the Kingdom of Thailand.

20 Q. Kingdom of Thailand. Okay. Lesson in world geography.

21 You were conducting tape-recorded interviews; right?

22 A. I was conducting tape-recorded interviews under the
23 approval of the Government of the Kingdom of Thailand. I had
24 full permission.

25 Q. So they were involved in this investigation as well?

1 A. They were involved by allowing our -- the ICE attaché,
2 which our agents were assigned to the office of the US Embassy
3 in Bangkok to conduct the investigation and control my
4 activities while I'm in the Kingdom of Thailand, including
5 conducting undercover meetings and tape recording and video
6 recording those meetings.

7 Q. Did they have any other involvement whatsoever?

8 A. Yes, they did.

9 Q. Did you receive any kind of report from Sandra regarding
10 her investigation of Mr. Xu?

11 A. No, I did not receive any reports from Sandra.

12 Q. Did you receive any kind of tape recordings from Sandra
13 that would be recordings between her and Mr. Xu?

14 A. No, I did not. As far as I know, none were ever made.

15 Q. Now, when Sandra was at this meeting, who was she
16 representing herself to be?

17 A. She was representing herself to be a friend of mine who
18 was trying to introduce me to Mr. Xu to put together this
19 deal.

20 Q. She was representing herself to be a parallel trader?

21 A. No, she was not.

22 Q. Were you representing yourself to be a parallel trader?

23 A. No, I never ever even used the term "parallel trader" as
24 far as my representation.

25 Q. All right. You're familiar with the term?

1 A. Yes, I am.

2 Q. And you were here when we talked about it earlier?

3 A. Yes, I was.

4 Q. And you agree with what Mr. Hern had to say regarding how
5 parallel trading takes place among the various -- several
6 countries in the European Union; correct?

7 A. Yes, that's correct.

8 Q. Now, did Sandra at any time obtain any samples from
9 Mr. Xu? Samples, and I'm talking about prescription
10 medication samples?

11 A. I believe they received or were shown sample boxes. I'd
12 have to look at the report for that.

13 Q. You'd have to look at your report?

14 A. My report.

15 Q. And do you have that report with you?

16 A. I'd have to look at the report in the case file.

17 Q. Could you do that, please, sir, with the Court's
18 permission.

19 THE COURT: That's fine.

20 A. Yes, according to my report on about August 25th, 2006,
21 the operative, Sandra, received Tamiflu and Cialis from Xu via
22 EMS and he also offered Zyprexa, Cialis and Plavix.

23 BY MR. AMANN:

24 Q. Okay. So at some point she actually obtained these
25 medications from Mr. Xu?

- 1 A. Yes, according to my report that's what happened.
- 2 Q. Did you ever get ahold of those?
- 3 A. I believe we did not.
- 4 Q. You did not?
- 5 A. No.
- 6 Q. All right. So you were not able to confirm whether the
- 7 samples that he provided to Sandra were, in fact, real product
- 8 or not?
- 9 A. No, the only samples I confirmed were the ones that he
- 10 provided me.
- 11 Q. Yes, those are the only ones you can confirm.
- 12 A. That's correct.
- 13 Q. Now, you were playing the role of a businessman when you
- 14 met with Mr. Xu very early on at the Bangkok meeting; right?
- 15 A. Yes, sir.
- 16 Q. That was the role you were playing?
- 17 A. Yes.
- 18 Q. That, of course, was not true, you were not a businessman
- 19 that dealt in clothing and so forth and so on, were you?
- 20 A. No, that's correct.
- 21 Q. And Sandra was just playing a friend who was trying to
- 22 connect you two together; right?
- 23 A. That was the role she was assuming.
- 24 Q. And that was not a true role, was it?
- 25 A. No, it was not.

1 Q. And Mr. Xu showed up with his wife to have this
2 discussion at the Bangkok airport?

3 A. He flew from China explicitly to meet me, yes?

4 Q. Now, you're starting this new business relationship with
5 Mr. Xu. Did you ever get a business card from him?

6 A. Yes, I did.

7 Q. Do you have that with you?

8 A. I misplaced it.

9 Q. You don't have it?

10 A. No, I do not.

11 Q. Okay. But you got a business card from him?

12 A. That's correct.

13 Q. And do you remember on the business card what he
14 purported to be?

15 A. I don't recall. I'm not sure.

16 Q. Okay. Did you give him a business card?

17 A. Yes, I did.

18 Q. Do you have one of those with you?

19 A. No, I do not.

20 Q. Do you have access -- can you get one for us to see what
21 it looks like?

22 A. Probably not, I'm probably out of those business cards.

23 Q. All right. Now, Mr. Xu at the -- let me ask you this
24 question: Are you familiar enough with the pharmaceutical
25 industry to know what it takes in terms of production lines to

1 actually produce a chemical -- or pharmaceutical chemical?

2 A. I don't have knowledge as far as technical production,
3 no, I do not.

4 Q. Would you agree with me, sir, that it's a pretty
5 complicated and involved process?

6 A. I would imagine so, yes.

7 Q. And it would involve quite a lot of money in terms of
8 investment in that process, wouldn't it?

9 A. I would imagine so.

10 Q. Now, when you met with Mr. Xu at this first meeting in
11 Bangkok, did he tell you where he lived?

12 A. I don't recall. I know he lived in China.

13 Q. Did you ever go to visit him in China?

14 A. No, I did not.

15 Q. He was -- is it fair to say that when you were meeting
16 with Mr. Xu at the Bangkok meeting that you were trying to get
17 his business?

18 A. I was trying to ascertain whether he, indeed, was the
19 individual who sent me the counterfeit -- the three shipments
20 of counterfeit pharmaceuticals that I received before the
21 meeting, which I did, by his own admission. And I also wanted
22 to see what type of volume he could provide in the future of
23 counterfeit pharmaceuticals. And I also wanted to see if he
24 wanted to continue with this process or wanted to back out,
25 which he did not do.

1 Q. Is that a yes?

2 A. Could you repeat the question again?

3 Q. You were trying to get his business, you were presenting
4 yourself to be somebody who was interested in doing this type
5 of business and you were trying to convince him to do that
6 business with you?

7 A. That was my undercover persona.

8 Q. That was your undercover persona.

9 A. Yes.

10 Q. And he was trying, in turn, to get your business, wasn't
11 he?

12 A. That's correct.

13 Q. So the things that you told him about what you did vis a
14 vis the pharmaceutical business, they were not true; right?

15 A. That's part of my undercover persona, that is correct.

16 Q. Part of your undercover persona was to convince him to
17 enter into a business relationship with you as the undercover
18 persona; right?

19 A. Well, to ascertain whether he, in fact, could do what he
20 said he could do.

21 Q. And he was trying to do what he could to get your
22 business; right?

23 A. I would imagine that's what he was trying to do.

24 Q. Right. At one point I think during the recording of the
25 Bangkok meeting there was some mention made about either a

1 factory or him being able to manufacture these various and
2 sundry pharmaceuticals that you were talking about. Do you
3 remember that?

4 A. Can you be more specific about it? I do remember that
5 was a topic of discussion.

6 Q. And that factory was supposedly where?

7 A. In China.

8 Q. Did you go to look for it?

9 A. I'm precluded by the Chinese government from being
10 involved in investigation in People's Republic of China so
11 that would have been impossible.

12 Q. You can't go to China? You can't travel to China?

13 A. As an official representative of the United States
14 Government, I cannot travel to China conducting investigations
15 internally without the express permission of the Chinese
16 government.

17 Q. Did you try to get that permission?

18 A. Yes, we did.

19 Q. And the Chinese government, you're telling us here today,
20 turned you down?

21 A. The Chinese -- we put a request in to the Chinese
22 government for assistance in this and we received no answer.

23 Q. And do you have the documents and so forth that
24 transpired between --

25 A. No, just conversations with the attaché's office.

1 Q. Okay. So you had conversations. Did you make an
2 official written request to visit China?

3 A. No, I did not.

4 Q. Okay. How many conversations did you have with this
5 Chinese attaché, as you put it, regarding --

6 A. It was a US attaché.

7 Q. So it wasn't somebody from China?

8 A. No, it was a US agent. We are not permitted to make
9 direct entreaties or discussions with the Chinese government.
10 That is against the US State Department and US Government
11 protocol. There are US Immigration and Customs Enforcement
12 agents who are known as attachés who are assigned to the
13 embassy who deal directly with the US ambassador and the state
14 department. Those are the individuals who make those
15 decisions, who make those negotiations. I am precluded and
16 forbidden from making any direct contact with the Chinese
17 government.

18 Q. So you were relying upon the US attaché to make the
19 necessary --

20 A. That's correct.

21 Q. -- contacts with the Chinese government?

22 A. That's correct.

23 Q. And I'm sure you expressed to them how important this
24 was?

25 A. That is correct.

1 Q. And I'm -- I assume they expressed to the Chinese
2 government how important it was?

3 A. I would imagine they did.

4 Q. And, nevertheless, you're telling us that you could not
5 get into China to verify whether or not this man had a factory
6 that was producing fake chemicals --

7 A. That is correct.

8 Q. -- fake pharmaceuticals?

9 A. That is correct.

10 Q. Now, with regards to the parallel importing -- and you
11 said you're familiar with that.

12 A. I have some familiarity, not a great deal.

13 Q. Okay. Part of what is allowed through the treaty that
14 allows the parallel importation of products between the
15 various and sundry countries of the EU is that product can be
16 obtained from one country, repackaged and then sent to another
17 country; isn't that correct?

18 A. Yes, legitimate product, not counterfeit product.

19 Q. I'm talking about legitimate product.

20 A. Yes.

21 Q. Okay. So repackaging, when you're talking about taking a
22 product and selling it in France and now you want to sell it
23 in England, repackaging is part and parcel --

24 A. I'm not qualified to answer that because I really don't
25 know.

1 Q. Well, it makes sense, that's what you would have to do.

2 A. It may make sense. I don't know if that's the process.

3 Q. All right. Now, with respect to what you represented to
4 Mr. Xu at the Bangkok meeting, you told him that you had a
5 partner in the United States who was a doctor.

6 A. That's correct.

7 Q. And that the doctor was the person that you were trying
8 to get together with Mr. Xu.

9 A. The doctor was the customer that was going to do the
10 distribution and mix Mr. Xu's product with legitimate US
11 product in the United States for distribution.

12 Q. And, of course, that was not the case though?

13 A. No, that was not the case.

14 Q. Special Agent Mason?

15 A. Mason, that's correct.

16 Q. He's not a doctor?

17 A. No, he's not a doctor.

18 Q. But Mr. Xu thought he was a doctor based on your
19 representation?

20 A. I believe he did think he was a doctor, yes.

21 Q. Okay. And it wouldn't be unreasonable for Mr. Xu to have
22 relied upon the representations of a doctor so as far as
23 obtaining pedigrees for the distribution of pharmaceutical
24 medicines, would it?

25 A. Not in this circumstance.

1 Q. Now, as far as the term "pedigree," would you agree with
2 me, sir, that that is a term of art?

3 A. Term of art?

4 Q. A term of art, yes.

5 A. You will have to be more specific. I don't know what you
6 mean by that.

7 Q. Well, is it something that just naturally get -- that we
8 use in everyday talk or is it something that's usually a term
9 of art that applies in a particular context with a very
10 specific meaning?

11 A. In this it is a specific meaning, I guess you could say
12 that, yes.

13 Q. Okay. And do you know whether there is a Chinese
14 equivalent word for pedigree?

15 A. No, I do not.

16 Q. So you don't know whether Mr. Xu understood the import of
17 the word pedigree, do you?

18 A. No, I do not.

19 Q. Now, Mr. Xu was at the Bangkok meeting still, he was
20 concerned about the timing of when you were going to be
21 placing your orders for product; is that correct?

22 A. Within what context?

23 Q. Within the context of your meeting it came up in
24 conversation and he stated in so many words --

25 A. If I recall, he just wanted time to prepare for it.

1 Q. All right. So he needed time to prepare for it?

2 A. That's correct.

3 Q. So he is running a factory that prepares these
4 pharmaceuticals, but he needs to know that much in advance to
5 prepare for quantity; correct?

6 A. That's what he conveyed.

7 Q. Now, he was also -- when we were talking about this
8 various and sundry packaging over here -- I want to start from
9 the beginning. Let's see.

10 Now, with respect to Government's Exhibit 2. Okay.
11 It's in evidence, it is the --

12 A. Tamiflu.

13 Q. -- the Tamiflu. All right. I believe you -- and this is
14 one of the first shipments you got from Mr. Xu?

15 A. That's correct.

16 Q. And this actually took place -- this shipment you got
17 from Mr. Xu took place before you had the meeting in Bangkok?

18 A. May I see it?

19 Q. Sure.

20 A. Yes, that's correct.

21 Q. All right. What's the approximate date that this was
22 received by y'all?

23 A. Approximate date of receipt was December 13, 2006.

24 Q. Now, would you agree with me, sir, that -- would you open
25 that for me?

1 Now, obviously, these all were not analyzed, were
2 they?

3 A. No, they weren't.

4 Q. And when you were analyzing them, how did you decide how
5 many -- well, let me ask you this: How many did you send out
6 to be analyzed?

7 A. Well, I didn't analyze them, obviously. I submitted a
8 sample to the trademark holder which is Hoffmann-Roche and
9 to -- also to the FDA, Food and Drug Administration.

10 Q. Do you remember how many you sent?

11 A. One blister pack to each, I think.

12 Q. One blister pack. Now, you agree with me, sir, that the
13 only way to get this pill out of here is to actually push it
14 through the blister pack; correct?

15 A. Yes, or cut it from behind.

16 Q. Or cut it from behind. So by just looking at it, there
17 is no way to tell whether it's real or not real, you need a
18 chemical analysis, don't you?

19 A. Analysis -- not just a chemical analysis, analysis of the
20 packaging also.

21 Q. Well, there's no packaging here?

22 A. The blister foil.

23 Q. Oh, the blister foil on the back?

24 A. That's right.

25 Q. All right. Now, you, I believe, testified that it was

1 unusual for this to come to you without the packaging; right?

2 A. That's correct.

3 Q. What we've also talked about, how -- if I can get it back
4 in the rubber band -- how in parallel importing of these drugs
5 amongst the various countries in the EU, it would be necessary
6 to repackage product before you send it out to the new
7 country.

8 A. I'm not certain of that. I think in some circumstances
9 you can internally do it without repackaging.

10 Q. Okay. Sometimes you can; sometimes you can't.

11 A. I'm not certain of that. I believe you can.

12 Q. Certainly if you're going to send something to Germany
13 that's in English it's going to have to be repackaged so the
14 German folks can read it; right?

15 A. At least the insert would, yes.

16 Q. Okay. Now, with respect to Government's Exhibit No. 6,
17 were these also received by you before the meeting in Bangkok
18 or after?

19 A. These are before.

20 Q. Okay. These are before. And what do we have in here?
21 We have Plavix like with the other ones. What else do we
22 have?

23 A. We have Plavix in this shipment and -- just Plavix.

24 Q. Just Plavix in here?

25 A. I have to look at the box to see if there's anything else

1 in there.

2 Q. So --

3 A. May I see it again?

4 Q. Yes. If it's easier for you to tell by looking at the
5 box --

6 A. Yeah, this shipment consisted of the Plavix, way bill,
7 inserts and on the boxes, I'm not sure.

8 Q. Okay. I was trying to look for the -- was this what came
9 along with them?

10 A. Yes. I wish you'd bring the whole box.

11 Q. I'm sorry.

12 A. Please don't mix them up.

13 Q. Now -- okay. We'll bring you one whole box. Okay?

14 A. Okay.

15 Q. Now, with respect to -- and these were all shipped to you
16 before the meeting in Bangkok; correct?

17 A. This is from another box.

18 Q. I'll put it back.

19 A. That's 286. Could you -- let me see that lot, sir.

20 Yeah, that's from one of the other boxes.

21 Q. All right.

22 A. This is from another box.

23 Q. This is from another box as well.

24 A. That's from the first one you pulled out.

25 Q. Okay.

1 A. This is correct.

2 Q. Very good. Now, this box which has Government's

3 Exhibit 6 in two bags, these -- were these shipped to you --

4 or let me ask you, how were they shipped to you?

5 A. They were shipped in the box together.

6 Q. Do you have the receipt from the shipping?

7 A. Yeah, the air way bill is one of the exhibits.

8 Q. All right.

9 A. That air way bill ending in 404CN.

10 MR. LOUIS: It would be Exhibit No. 7.

11 MR. AMANN: All right. So this stuff here is in

12 evidence?

13 MR. LOUIS: Yes.

14 BY MR. AMANN:

15 Q. All right. So taking a look, sir, at Government's

16 Exhibit -- let's see if I can pick this thing back up. Okay.

17 That's Government's Exhibit No. 7.

18 A. Yes, sir.

19 Q. And that's what accompanied the shipment that we have

20 here, Government's Exhibit No. 6?

21 A. That was the corresponding shipping label, yes, sir.

22 Q. All right. Now, we have here from where it's, I assume,

23 coming from is Beijing, that's a province in China?

24 A. Tianjin.

25 Q. Is that a province?

1 A. City in China.

2 Q. And it's from Cici Vorp. And there's an address listed
3 there; correct?

4 A. Yes.

5 Q. Did you ever attempt to investigate who CC Vorp was or
6 what corporation that might have been?

7 A. We did database checks as far as ongoing investigations
8 on that address and we didn't find any.

9 Q. So you were not able to trace that address?

10 A. No.

11 Q. You don't know who shipped it.

12 A. All I know is that someone put that on there. I don't
13 know if it's -- it's not unusual to have false addresses and
14 names on labels.

15 Q. It's also not unusual, sir, for people that are in
16 business to hire different shipping companies to do their
17 shipping for them, is it?

18 A. That's correct.

19 Q. That's correct. All right. Hang on. I'll try to make
20 this easier.

21 MR. AMANN: Maybe, Your Honor, if I have a little
22 bit -- maybe if I can go through my notebook.

23 BY MR. AMANN:

24 Q. All right. Let's take a look at Government's Exhibit

25 No. 3. Again, sir, this is a shipping bill from EMS, not

1 necessarily relating to the first batch that came in before
2 the Bangkok meeting, but for purposes of my question here, do
3 you see who the shipper was.

4 A. Yes. It's at a weird angle. It looks like a Wang.

5 Q. All right. And there's actually an address listed there.

6 A. Yeah. I can't read that.

7 Q. Well, it's in Chinese. Did you ever attempt to have it
8 translated so that you could ascertain what the address or who
9 the address was?

10 A. No, we did not.

11 Q. Sir, Government's Exhibit No. 5, again, shipping address
12 from -- return address from somebody named Wang.

13 A. Yes.

14 Q. I believe the Government's Exhibit No. 5 may be obscuring
15 some of the address that appears to be in Chinese; right?

16 A. That is correct.

17 Q. Did you ever have a chance to have that translated so
18 that we know whose address that was?

19 A. No, we did not.

20 Q. Let me ask you this, sir: With respect to all of the EMS
21 shipments that came to you or Express Mail shipments that came
22 to you, did you ever try to ascertain who was the shipper?

23 A. Yes.

24 Q. And which one was that?

25 A. All of them.

1 Q. All of them?

2 A. Within the course of conversation, yes.

3 Q. Okay. Did you ever find out who was doing the shipping?

4 A. Mr. Xu told me he was.

5 Q. Mr. Xu said he was doing the shipping?

6 A. In the conversations, he said that those were his items
7 that he sent, yes.

8 Q. All right. But I'm talking about the actual business
9 that did the shipping.

10 A. Oh, regarding what's typed on the thing?

11 Q. Yes, sir.

12 A. No, we did not.

13 Q. Okay. Now, let's talk some about pictures. Part of
14 Government's Exhibit No. 60, Sub-item 6, sir, are pictures of
15 what appears to be Aricept, 10 milligrams. I believe with
16 respect to -- I'll let you look at all of these other
17 Government exhibits while I'm talking about this one.

18 A. Counsel, if you're going to ask me to respond to specific
19 exhibits, can I see a list of them?

20 Q. Yes. Well, that's what I was planning on doing.

21 A. Okay.

22 Q. I was going to give this to you and let you look at these
23 pictures because I can ask a question hopefully that covers
24 them all at once.

25 Before we get to that, let me ask one more question

1 about this. On Government's Exhibit 38, actually we've got a
2 return address for these items that is not in Chinese, that's
3 in English.

4 A. That's correct.

5 Q. Did you ever attempt to track down that address so that
6 you could ascertain where that shipment came from?

7 A. In response to that question let me say that --

8 Q. Yes or no? I'm sorry.

9 A. We don't have the ability to track it down. We have
10 unable -- sovereignty issues because of the People's Republic
11 of China is very strict what kind of law enforcement actions
12 we're able to undertake in their country. We have no law
13 enforcement authority, our attachés have no law enforcement
14 authority. We can't do that without their permission. We did
15 run in the databases to see if there was a history of
16 shipments from that location and didn't find any.

17 Q. So you ran the database and you didn't find any?

18 A. Our internal database, yes.

19 Q. Do you have a log of your running of that particular
20 database?

21 A. No, no.

22 Q. Okay. Returning to the picture, let me zoom back out a
23 little bit.

24 Now, this picture, Government's Exhibit 6, which is
25 the subset of Government's Exhibit 60, and these other

1 pictures, sir, that you have in front of you 5, 4, 27 and 26,
2 okay, which, those that you have before you, are all pictures
3 of various and sundry prescription medications and their
4 packaging; correct?

5 A. Yes, sir, that's correct.

6 Q. We've got two Zyprexa here, one of Casodex, one of
7 Aricept and then the one of Aricept up here on the --

8 A. Okay. These are subsets of?

9 Q. Government's Exhibit No. 60.

10 A. Okay. 60?

11 Q. 60, it's 60 and then they put these little numbers on
12 them.

13 A. Thank you.

14 Q. Now, you don't know who took that picture; correct?

15 A. That's correct.

16 Q. You don't know when that picture was taken?

17 A. No, I do not.

18 Q. You don't know -- let me ask you this: Have you ever
19 been to any of these manufacturers -- pharmaceutical
20 manufacturers websites?

21 A. Are you talking about the legitimate manufacturers?

22 Q. Yes.

23 A. Yes.

24 Q. And actually, sir, if you go to those websites you will
25 find examples of what their product looks like, won't you?

1 A. Yes.

2 Q. These pictures -- these kinds of pictures that show you
3 what these pharmaceutical medicines look like, you can also
4 find on websites like WebMD, for example, or some
5 pharmaceutical websites that people search for information
6 about the prescription drugs they're taking; right?

7 A. I've never used WebMD so I don't know.

8 Q. You know what I'm talking about?

9 A. I'm familiar with them. I don't know if they have
10 pictures on there.

11 Q. Okay. But it certainly would not be unusual for these
12 pictures to be readily available on the internet?

13 A. Not these pictures, but pictures of the drugs, yes.

14 Q. Yes, and what they look like?

15 A. That's correct.

16 Q. All right.

17 THE COURT: I think this would be a good time to
18 recess for the day.

19 Ladies and gentlemen --

20 Why don't you have a seat, Mr. Amann.

21 MR. AMANN: Oh, I'm sorry, Judge.

22 THE COURT: Thank you very much for being here on
23 time. We try to use your time efficiently. That's why I
24 don't have long breaks and we try to get in six hours of
25 evidence every day. My theory is if we work long days, we'll

1 work fewer days. And I think most jurors appreciate that. I
2 told you the trial would take a week. We're not going to meet
3 Friday because it's a holiday so my best guess is it will
4 probably conclude Monday, which would be a week. So we will
5 meet tomorrow, which is Wednesday, Thursday and then my
6 estimate is the case will probably go to you for consideration
7 sometime Monday. That's just my best estimate based on my
8 visiting with the lawyers and my experience. So I remind you
9 again, do not talk to anyone about the case. Do not allow
10 anyone to talk to you, do not do any independent investigation
11 or research or read or listen to anything about the case.
12 Again, you may leave your notes, if you're taking them, on the
13 jury table. We'll begin again at 8:30 tomorrow morning.

14 Thank you. You're excused until then.

15 (Outside the presence of the jury.)

16 THE COURT: Be seated, please.

17 You can return to your seat.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: Just to recapitulate, the only issue
20 remaining on the charge is the Government's proposed
21 instruction on Counts 5 through 9 and in particular whether
22 the fifth element proposed by the defendant is necessary. And
23 then the correct definition of the term "counterfeit mark."

24 I note that in 18 United States Code,
25 Section 2320(e), there are definitions of both counterfeit

1 mark and traffic. So you might look at those definitions and
2 confer this afternoon or this evening and, hopefully, give me
3 an agreed instruction and agreed definitions. If not, I'll
4 receive your separate submissions tomorrow at 8:20.

5 MR. AMANN: Yes, sir.

6 THE COURT: Is there anything else we need to address
7 now before we adjourn.

8 MR. LOUIS: We may ask the Court, as we did today, to
9 take maybe one or two of the chemists out of turn. I'll talk
10 with Mr. Colin about it and see if he's agreeable.

11 THE COURT: Is your witness still -- have you made
12 attempts to get your witness here?

13 MR. AMANN: Yes, sir. He said that he would be here
14 Thursday. So he rearranged all his plans to come early.

15 THE COURT: Good. Okay. Anything else?

16 MR. AMANN: No, sir.

17 THE COURT: Thank you. We'll see you tomorrow
18 morning at 8:30.

19 (Court recessed at 4:38 p.m.)
20
21

22 I certify that the foregoing is a correct transcript
23 from the record of the proceedings in the above-entitled
24 matter.

25

/s/

JEANETTE BYERS, RPR
August 20, 2008